MONTANA ADMINISTRATIVE REGISTER

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The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.94.3101 and 8.94.3102 pertaining to the administration of the Montana Historic Preservation Grant (MHPG) Program	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On October 27, 2023, at 10:00 a.m., the Department of Commerce will hold a public hearing in person at 301 S. Park Avenue, Room 226 or via Zoom video conference to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

a. Video:

https://mt-gov.zoom.us/webinar/register/WN_674d4ycFRWaM-Yx730uGIg

b. Phone: Dial in by Telephone: 406-444-9999

Meeting ID: 839 0903 8198 Password: 666624

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., October 24, 2023, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; TDD (406) 841-2702; fax (406) 841-2771; or e-mail docadministrativerules@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

8.94.3101 INCORPORATION BY REFERENCE OF RULES FOR THE SUBMISSION AND REVIEW OF APPLICATIONS FOR THE MONTANA HISTORIC PRESERVATION GRANT PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Historic Preservation Grant Program ~~2022~~ 2024 Application and Guidelines for the ~~2025~~ 2027 Biennium.

(2) The rules incorporated by reference in (1) relate to the following:

(a) eligible applicants and projects;

(b) types of grants available under MHPG;

(c) general requirements for applying for MHPG grants;

(d) application review process; and

(e) administrative procedures and requirements.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, ~~Community Development Division~~ Community MT, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the web site at https://comdev.mt.gov/Programs-and-Boards/Montana-Historic-Preservation-Grant.

AUTH: 22-3-1305, 22-3-1306, MCA
IMP: 22-3-1305, 22-3-1306, MCA

REASON: The Montana Historic Preservation Grant (MHPG) has modified the application and guidelines to adhere to amendments during the 68th Legislature. Specifically, the Legislature wrote in HB 12 two additional criteria: the degree of local contribution and anticipated public benefit, including the extent the site or building will be open to the public and the degree of immediate facility use after project completion. Administrators of the grant have also provided an application eligibility screening checklist (Appendix A) and modified the scoring process.

8.94.3102 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE MONTANA HISTORIC PRESERVATION GRANT PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Historic Preservation Grant Program Project Administration Manual (October ~~2021~~ 2023).

(2) The rules incorporated by reference in (1) relate to the following:

(a) project start-up requirements;
(b) environmental requirements;
(c) procurement requirements;
(d) financial management;
(e) protection of civil rights;
(f) labor requirements;
(g) project management;
(h) involving the public;
(i) project monitoring; and
(j) project closeout.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, ~~Community Development Division~~ Community MT, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the web site at https://comdev.mt.gov/Programs-and-Boards/Montana-Historic-Preservation-Grant.

AUTH: 22-3-1305, 22-3-1306, MCA
IMP: 22-3-1305, 22-3-1306, MCA

REASON: The Montana Historic Preservation Grant (MHPG) has modified the application and guidelines to adhere to amendments during the 68th Legislature. Specifically, the legislature wrote in HB 12 two additional criteria: the degree of local contribution and anticipated public benefit, including the extent the site or building

will be open to the public and the degree of immediate facility use after project completion. Administrators of the grant have also provided an application eligibility screening checklist (Appendix A) and modified the scoring process.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministraiverules@mt.gov, and must be received no later than 5:00 p.m., November 3, 2023.

5. The Office of Legal Affairs, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact listed in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ John Semmens
John Semmens
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State September 26, 2023.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.9.1303 pertaining to control methods of the gray wolf include nonlethal and legal means	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 3, 2023, at 1:00 p.m., the Fish and Wildlife Commission (commission) will hold a telephonic public hearing via the ZOOM meeting platform to consider the proposed amendment of the above-stated rule. There will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone: +1 206 337 9723
Meeting ID: 874 3443 5834
Passcode: 547674

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Montana Fish, Wildlife and Parks (FWP), no later than 5:00 p.m., on October 20, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Montana Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

3. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

12.9.1303 CONTROL METHODS OF THE GRAY WOLF INCLUDE NONLETHAL AND LEGAL MEANS (1) These rules address when and how the department may carry out nonlethal and lethal control of wolves.

(2) To undertake control actions that are consistent with this rule ~~and the Montana Gray Wolf Conservation and Management Plan~~, the department may:

(a) take control actions;

(b) authorize USDA Wildlife Services pursuant to an interagency cooperative agreement;

(c) authorize the Department of Livestock pursuant to an interagency cooperative agreement; or

(d) issue permits to individuals pursuant to ARM 12.9.1305.

(3) The department is responsible for the status, conservation, and management of the gray wolf population as a state species in need of management, game animal, or a furbearer as guided by ~~the Montana Gray Wolf Management Plan,~~ administrative rules~~,~~ and statutes.

(4) Control of the gray wolf by an agency or an individual may include nonlethal and lethal actions. Specific control actions shall connect in both time and location to a wolf or wolves with the highest likelihood of having injured or killed the livestock.

(5) The department shall take an incremental approach to lethal control.

(6) Killing or harassing a wolf not in conformance with these rules is subject to criminal penalties pursuant to 87-5-106, 87-5-111, 87-6-201,and 87-6-203, MCA, as applicable.

AUTH: 87-1-201, 87-1-301, 87-1-901, 87-5-105, 87-5-110, 87-5-131, MCA
IMP: 87-1-201, 87-1-301, 87-1-901, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

REASON: Any reference to Montana's wolf management plan should be removed. This will ensure that the plan cannot be referenced as a rule and will act as an advisory document.

4. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Wildlife Division, ATTN: Wolf ARM, Montana Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail fwpwld@mt.gov, and must be received no later than November 6, 2023.

5. Christina Bell or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. FWP maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Written request may be mailed or delivered to: Montana Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to cbell@mt.gov.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the commission has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

Certified to the Secretary of State September 26, 2023.

BEFORE THE GOVERNOR'S OFFICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 14.6.103 pertaining to Sage Grouse Habitat Quantification Tool Designation	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 7, 2023, at 10:00 a.m., the Sage Grouse Habitat Conservation Program will hold a public hearing in the Montana Room, First Floor, located at 1539 Eleventh Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule. Details about remote participation via the ZOOM meeting platform will be available prior to the hearing at https://sagegrouse.mt.gov/Team.

2. The Governor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Governor's Office no later than 5:00 p.m. on October 20, 2023, to advise us of the nature of the accommodation that you need. Please contact Mark Bostrom, Montana Sage Grouse Oversight Team, c/o Montana Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana, 59620-1601; (406) 444-9708; or e-mail mbostrom2@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

<u>14.6.103 HABITAT QUANTIFICATION TOOL DESIGNATION</u>

(1) through (6) remain the same.

AUTH: 76-22-104, MCA
IMP: 76-22-105, 76-22-109, 76-22-110, 76-22-111, 76-22-112, 76-22-113, 76-22-114, 76-22-118, MCA

<u>REASON</u>: The Montana Sage Grouse Habitat Conservation Program detected a technical error in the Habitat Quantification Tool (HQT) Technical Manual that affects the technical process for updating the Habitat Quantification Tool Basemap. The Basemap currently in use (v1.0 2018) was developed based on a thorough stakeholder process undertaken during 2017 and pre-dates the Technical Manual, which was published in October 2019. The technical error concerns the mathematical incorporation of the Unsuitable Lands designations within the Basemap. The stakeholder process and subsequent 2018 Basemap incorporates Unsuitable Lands using multiplication, however, the Technical Manual incorporates Unsuitable Lands using averaging. This has major implications on the assessment of impacts for proposed projects within designated sage-grouse habitat. The Sage

Grouse Program is proposing this correction now in order to provide an updated and accurate Basemap for Montana citizens. By implementing this correction, the Sage Grouse Program would 1) provide a consistent approach for updating the Basemap, 2) follow the recommendations provided by the original stakeholder process, and 3) to avoid the perpetuation of errors. The correction of this technical error is considered a major change and thus requires rulemaking. The Sage Grouse Program is also taking the opportunity to rectify grammatical errors and typos (considered minor changes) found within the HQT Technical Manual found at https://sagegrouse.mt.gov/Team.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Mark Bostrom, Montana Sage Grouse Oversight Team, c/o Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana, 59620-1601; telephone (406) 444-9708; or e-mail mbostrom2@mt.gov and must be received no later than 5:00 p.m. on November 7, 2023.

5. Mark Bostrom, Montana Sage Grouse Oversight Team, has been designated to preside over and conduct this hearing.

6. The Sage Grouse Program maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to be added to the list can go to https://sagegrouse.mt.gov/About and join the mailing list by entering their e-mail address. Notices will be sent by e-mail.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Anita Milanovich
Anita Milanovich
Rule Reviewer

/s/ Michael Freeman
Michael Freeman
Natural Resource Policy Advisor
Governor's Office

Certified to the Secretary of State September 26, 2023.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.301, 17.24.302, 17.24.303, 17.24.304, 17.24.305, 17.24.306, 17.24.308, 17.24.310, 17.24.311, 17.24.312, 17.24.313, 17.24.314, 17.24.315, 17.24.316, 17.24.317, 17.24.318, 17.24.319, 17.24.320, 17.24.321, 17.24.322, 17.24.324, 17.24.325, 17.24.326, 17.24.327, 17.24.401, 17.24.402, 17.24.403, 17.24.404, 17.24.405, 17.24.406, 17.24.407, 17.24.412, 17.24.413, 17.24.414, 17.24.415, 17.24.416, 17.24.417, 17.24.418, 17.24.425, 17.24.426, 17.24.427, 17.24.501, 17.24.502, 17.24.503, 17.24.504, 17.24.505, 17.24.507, 17.24.510, 17.24.515, 17.24.516, 17.24.517, 17.24.518, 17.24.520, 17.24.521 17.24.522, 17.24.523, 17.24.524, 17.24.601, 17.24.602, 17.24.603, 17.24.605, 17.24.607, 17.24.608, 17.24.609, 17.24.610, 17.24.621, 17.24.622, and 17.24.623 pertaining to transfer of rulemaking authority from the Board of Environmental Review to the Department of Environmental Quality	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 9, 2024, the Department of Environmental Quality (department) proposes to amend the above-stated rules. On September 22, 2023, the department published Notice No. 17-432A, the first of an anticipated four rulemaking notices under the Notice No. 17-432. The department now anticipates publishing five proposal notices; this second notice is Notice No. 17-432B.

2. The Department of Environmental Quality will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Environmental Quality no later than 5:00 p.m. on November 27, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-432rulemaking@mt.gov.

3. General Reason Statement: During the 2021 legislative session, the legislature passed Senate Bill 233. Senate Bill 233 reassigned and transferred the rulemaking duties and powers of the Board of Environmental Review to the department. In addition, Senate Bill 233 repealed 75-6-103, 75-10- 106, 82-4-111, and 82-4-204, MCA. Through this rulemaking, the department will be implementing the 2021 changes to rulemaking authority by striking "board" and changing it to "department." The department will also update the citations to the MCA sections that have been repealed by Senate Bill 233. The department is making these changes to implement the 2021 statute and to clarify the change of authority to make it easier for the general public and the regulated community to determine the appropriate process and entity for future rulemakings.

4. The department proposes to amend the following rules, new matter underlined, deleted matter interlined. Please refer to the General Reason Statement above.

17.24.301 DEFINITIONS The following definitions apply to all terms used in the Strip and Underground Mine Reclamation Act and subchapters 3 through 13 of this chapter:

(1) through (146) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-203, MCA

17.24.302 FORMAT, DATA COLLECTION, AND SUPPLEMENTAL INFORMATION (1) through (9) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.303 LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.304 BASELINE INFORMATION: ENVIRONMENTAL RESOURCES (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.305 MAPS (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.306 BASELINE INFORMATION: PRIME FARMLAND INVESTIGATION (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.308 OPERATIONS PLAN (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.310 BLASTING PLAN (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.311 AIR POLLUTION CONTROL PLAN (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.312 FISH AND WILDLIFE PLAN (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, 82-4-232, MCA

17.24.313 RECLAMATION PLAN (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, 82-4-231, 82-4-232, 82-4-233, 82-4-234, MCA

17.24.314 PLAN FOR PROTECTION OF THE HYDROLOGIC BALANCE (1) through (5) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.315 PLAN FOR PONDS AND EMBANKMENTS (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.316 STRIP OR UNDERGROUND MINING NEAR UNDERGROUND MINING (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.317 DIVERSIONS (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.318 PROTECTION OF PUBLIC PARKS AND HISTORIC PLACES (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.319 RELOCATION OR USE OF PUBLIC ROADS Each application must describe, with appropriate maps and cross-sections or other proof required by the department, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under ARM 17.24.1134 and 17.24.1135, the applicant is seeking approval of:

(1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.320 PLANS FOR DISPOSAL OF EXCESS SPOIL (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.321 TRANSPORTATION FACILITIES PLAN (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.322 GEOLOGIC INFORMATION AND COAL CONSERVATION PLAN (1) through (5) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.324 PRIME FARMLANDS: SPECIAL APPLICATION REQUIREMENTS (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.325 COAL MINING OPERATIONS ON AREAS OR ADJACENT TO AREAS INCLUDING ALLUVIAL VALLEY FLOORS: SPECIAL APPLICATION REQUIREMENTS (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.326 AUGER MINING: SPECIAL APPLICATION REQUIREMENTS (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.327 COAL PROCESSING PLANTS AND SUPPORT FACILITIES NOT LOCATED WITHIN A MINE PERMIT AREA: SPECIAL APPLICATION REQUIREMENTS (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.401 FILING OF APPLICATION AND NOTICE (1) through (6) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, 82-4-226, 82-4-231, 82-4-232, 82-4-233, MCA

17.24.402 SUBMISSION OF COMMENTS AND WRITTEN OBJECTIONS (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-226, 82-4-231, MCA

17.24.403 INFORMAL CONFERENCE (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-226, 82-4-231, MCA

17.24.404 REVIEW OF APPLICATION (1) through (8) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, 82-4-206, MCA
IMP: 82-4-226, 82-4-231, MCA

17.24.405 FINDINGS AND NOTICE OF DECISION (1) through (7) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, 82-4-206, MCA

IMP: 82-4-226, 82-4-231, MCA

17.24.406 IMPROVIDENTLY ISSUED PERMITS: GENERAL PROCEDURES (1) through (3) remains the same.

AUTH: 82-4-205, MCA
IMP: ~~82-4-204,~~ 82-4-205, 82-4-222, 82-4-227, MCA

17.24.407 IMPROVIDENTLY ISSUED PERMITS: REVOCATION (1) remains the same.

AUTH: 82-4-205, MCA
IMP: ~~82-4-204,~~ 82-4-205, 82-4-222, 82-4-227, MCA

17.24.412 EXTENSION OF TIME TO COMMENCE MINING (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-221, MCA

17.24.413 CONDITIONS OF PERMIT (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, 82-4-231, MCA

17.24.414 REVIEW OF EXISTING PERMITS (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-237, MCA

17.24.415 PERMIT REVISIONS (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-221, MCA

17.24.416 PERMIT RENEWAL (1) through (8) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-221, 82-4-226, MCA

17.24.417 PERMIT AMENDMENT (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-225, MCA

17.24.418 TRANSFER OF PERMITS (1) through (6) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-238, MCA

17.24.425 ADMINISTRATIVE REVIEW (1) through (6) remain the same.

(7) The burden of proof at such hearing is on the party seeking to reverse the decision of the ~~board~~ department.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-206, 82-4-221, 82-4-226, 82-4-231, 82-4-232, MCA

17.24.426 RECORDS RETENTION (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, 82-4-232, MCA

17.24.427 CHANGE OF CONTRACTOR (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-222, 82-4-227, 82-4-238, 82-4-251, MCA

17.24.501 GENERAL BACKFILLING AND GRADING REQUIREMENTS (1) through (7) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, 82-4-231, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.502 CUT-AND-FILL TERRACES On approval by the department, in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces must meet the following requirements:

(1) through (6) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-232, MCA

17.24.503 SMALL DEPRESSIONS (1) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-232, MCA

17.24.504 PERMANENT IMPOUNDMENTS (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-232, MCA

17.24.505 BURIAL AND TREATMENT OF EXPOSED MINERAL SEAMS AND WASTE MATERIALS (1) through (8) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.507 STORAGE AND FINAL DISPOSAL OF GARBAGE AND OTHER DEBRIS (1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.510 DISPOSAL OF OFFSITE-GENERATED WASTE AND FLY ASH (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-232, MCA

17.24.515 HIGHWALL REDUCTION (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, 82-4-231, MCA
IMP: 82-4-232, MCA

17.24.516 ADJACENT STRIP AND UNDERGROUND MINING OPERATIONS (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.517 SLIDES AND OTHER DAMAGE (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.518 BUFFER ZONES (1) remains the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-227, MCA

17.24.520 THICK OVERBURDEN AND DISPOSAL OF EXCESS SPOIL (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.521 TEMPORARY CESSATION OF OPERATIONS (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.522 PERMANENT CESSATION OF OPERATIONS (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.523 COAL FIRES AND COAL CONSERVATION (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-232, MCA

17.24.524 SIGNS AND MARKERS (1) through (6) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.601 GENERAL REQUIREMENTS FOR ROAD AND RAILROAD LOOP CONSTRUCTION (1) through (11) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.602 LOCATION OF ROADS AND RAILROAD LOOPS (1) and (2) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.603 ROAD AND RAILROAD LOOP EMBANKMENTS (1) through (5) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.605 HYDROLOGIC IMPACT OF ROADS AND RAILROAD LOOPS (1) through (9) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.607 MAINTENANCE OF ROADS AND RAILROAD LOOPS
(1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.608 IMPACTS OF OTHER TRANSPORT FACILITIES Other transportation facilities within the area of land affected, including railroad spurs, sidings, surface conveyor systems, chutes, aerial tramways, pipelines, powerlines, and other transport facilities must be designed, constructed, reconstructed, maintained, and reclaimed to:
(1) through (4) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.609 OTHER SUPPORT FACILITIES (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.610 PERMANENT ROADS (1) remains the same.

AUTH: ~~84-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.621 GENERAL REQUIREMENTS FOR USE OF EXPLOSIVES
(1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.622 PREBLASTING SURVEY (1) through (3) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.623 BLASTING SCHEDULE (1) through (7) remain the same.

AUTH: ~~82-4-204,~~ 82-4-205, MCA
IMP: 82-4-231, MCA

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the department, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-432rulemaking @mt.gov, and must be received no later than 11:59 p.m., December 1, 2023.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the Department at the above address no later than 5:00 p.m., November 23, 2023.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 259 persons based on the interested parties list of 2,591 individuals.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail on July 5, 2023.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Angela Colamaria
ANGELA COLAMARIA
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environment Quality

Certified to the Secretary of State September 26, 2023.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.501, 17.30,502, 17.30.606, 17.30.617, 17.30.619, 17.30.630, 17.30.702, 17.30,706, 17.30.708, 17.30.1007, 17.30.1102, 17.30.1201, 17.30.1202, 17.30.1203, 17.30.1206, 17.30.1207, 17.30.1211, 17.30.1212, 17.30.1304, 17.30.1322, 17.30.1330, 17.30.1331, 17.30.1334, 17.30.1341, 17.30.1342, 17.30.1343, 17.30.1344, 17.30.1345, 17.30.1346, 17.30.1354, 17.30.1361, 17.30.1803, and 17.30.1806 pertaining to transfer of rulemaking authority from the Board of Environmental Review to the Department of Environmental Quality	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (WATER QUALITY BUREAU)

TO: All Concerned Persons

1. On February 9, 2024, the Department of Environmental Quality (department) proposes to amend the above-stated rules. On September 22, 2023, the department published Notice No. 17-432A, the first of an anticipated four rulemaking notices under the Notice No. 17-432. The department now anticipates publishing five proposal notices. This third notice is Notice No. 17-432C, in which the department is holding a hearing for the Water Quality Bureau pursuant to the U.S. Environmental Protection Agency regulations at 40 CFR § 131.20(b) that require a public hearing for revisions to water quality standards.

2. On November 29, 2023, at 10:30 a.m., the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, at 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

Members of the public may participate either in-person or virtually. For in-person meetings. Registration with Zoom may be made at the following link: Join Zoom Meeting

Please click the link below to join the webinar:
https://mt-gov.zoom.us/j/81879894064?pwd=bkdBUGcrVG9lSW5mTk5XSlJYc2tuUT09
Passcode: 608869
Or One tap mobile :
+12063379723,,81879894064#,,,,*608869# US (Seattle)
+12133388477,,81879894064#,,,,*608869# US (Los Angeles)
Or Telephone:

Dial(for higher quality, dial a number based on your current location):
+1 206 337 9723 US (Seattle)
+1 213 338 8477 US (Los Angeles)
+1 646 558 8656 US (New York)
Webinar ID: 818 7989 4064
Passcode: 608869
International numbers available: https://mt-gov.zoom.us/u/kb61M0DoqV

Or an H.323/SIP room system:
H.323: 162.255.37.11 (US West) or 162.255.36.11 (US East)
Meeting ID: 818 7989 4064
Passcode: 608869
SIP: 81879894064@zoomcrc.com
Passcode: 608869

3. General Reason Statement: During the 2021 legislative session, the legislature passed Senate Bill 233. Senate Bill 233 reassigned and transferred the rulemaking duties and powers of the Board of Environmental Review to the department. In addition, Senate Bill 233 repealed 75-6-103, 75-10- 106, 82-4-111, and 82-4-204, MCA. Through this rulemaking, the department will be implementing the 2021 changes to rulemaking authority by striking "board" and changing it to "department." The department will also update the citations to the MCA sections that have been repealed by Senate Bill 233. The department is making these changes to implement the 2021 statute and to clarify the change of authority to make it easier for the general public and the regulated community to determine the appropriate process and entity for future rulemakings.

4. The department proposes to amend the following rules, new matter underlined, deleted matter interlined. Please refer to the General Reason Statement above.

17.30.501 PURPOSE (1) The purpose of this subchapter is to implement 75-5-301(4), MCA, which requires the ~~board~~ department to adopt rules governing the granting of mixing zones consistent with the provisions of 75-5-302 through 75-5-307 and 80-15-201, MCA.

AUTH: 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.502 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, and ARM Title 17, chapter 30, subchapters 6 and 7, apply throughout this subchapter:

(1) through (13) remain the same.

(14) The ~~board~~ department adopts and incorporates by reference Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (June 2019 edition), which establishes numeric water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

Copies of Department Circular DEQ-7 are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.606 STREAM CLASSIFICATION (1) Before streams are classified or standards established or modified, the ~~board~~ department shall hold a public hearing.

(a) through (d) remain the same.

AUTH: 75-5-201, MCA
IMP: 75-5-307, MCA

17.30.617 OUTSTANDING RESOURCE WATERS – DESIGNATION

(1) All state surface waters located wholly within the boundaries of designated national parks or wilderness areas as of October 1, 1995, are outstanding resource waters (ORWs). Other state waters may be designated an ORW by the ~~board~~ department following the procedures in 75-5-316, MCA, subject to approval by the legislature.

AUTH: 75-5-301, 75-5-316, MCA
IMP: 75-5-316, MCA

17.30.619 INCORPORATIONS BY REFERENCE (1) The ~~board~~ department adopts and incorporates by reference the following state and federal requirements and procedures as part of Montana's surface water quality standards:

(a) through (3) remain the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, 75-5-313, MCA

17.30.630 TEMPORARY WATER QUALITY STANDARDS (1) Following are the temporary water quality standards and related provisions for New World Mining District:

(a) The goal of the state of Montana is to have these waters support the uses listed for waters classified B-1 at ARM 17.30.623(1). The standards for the parameters listed in this rule temporarily modify the specific standards for those parameters provided in ARM 17.30.623 for each of the water bodies listed below, until the temporary standards expire or are terminated by the ~~board~~ department. The standards for parameters not listed in this rule are the specific standards listed in ARM 17.30.623. The existing uses of the water bodies listed below must be maintained during the period that these temporary standards are in effect. No increase from existing conditions for any of the parameters that have been temporarily modified (no decrease for pH) is allowed at any point in the affected stream segments. The numerical standards for specific parameters listed below apply only at the downstream end of the stream segment. The requirements of ARM

17.30.623update apply to the waters listed in this rule except where those requirements conflict with the temporary standards listed below.

(b) through (e) remain the same.

AUTH: 75-5-201, 75-5-312, MCA
IMP: 75-5-312, MCA

17.30.702 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "base numeric nutrient standards," "degradation," "existing uses," "high quality waters," "mixing zone," and "parameter"):

(1) through (20) remain the same.

(21) "Reporting values (RRV)" means the detection level that must be achieved in reporting surface water or ground water monitoring or compliance data to the department unless otherwise specified in a permit, approval, or authorization issued by the department. The RRV is the ~~board's~~ department's best determination of a level of analysis that can be achieved by the majority of commercial, university, or governmental laboratories using EPA approved methods or methods approved by the department. The RRV is listed in Department Circular DEQ-7, Department Circular DEQ-12A, and in the definition of "total inorganic phosphorus."

(22) through (26) remain the same.

(27) The ~~board~~ department adopts and incorporates by reference:

(a) through (e) remain the same.

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, MCA

17.30.706 INFORMATIONAL REQUIREMENTS FOR NONDEGRADATION SIGNIFICANCE/AUTHORIZATION REVIEW (1) remains the same.

(2) The department will determine whether a proposed activity may cause degradation based on information submitted by the applicant for all activities that are permitted, approved, licensed, or otherwise authorized by the department. If the department determines that additional information is necessary to determine whether the activity is nonsignificant according to criteria established by the ~~board~~ department, the department may require the applicant to provide the information in (3)(a) through (e).

(3) through (12) remain the same.

(13) The ~~board~~ department adopts and incorporates by reference ARM 17.30.1323, as amended on February 14, 2003, which sets forth signature and certification requirements for MPDES permit applications. A copy of ARM 17.30.1323 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, MCA

17.30.708 DEPARTMENT PROCEDURES FOR ISSUING PRELIMINARY AND FINAL DECISIONS REGARDING AUTHORIZATIONS TO DEGRADE

(1) through (7) remain the same.

(8) The ~~board~~ department ~~hereby~~ adopts and incorporates by reference ARM 17.30.1372, which sets forth procedures for issuing public notices of MPDES permit applications and hearings, and ARM 17.30.1041 which sets forth requirements for distribution and copying of public notices and permit applications. Copies of ARM 17.30.1372 and 17.30.1041 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, MCA

17.30.1007 SAMPLE COLLECTION, PRESERVATION, AND ANALYSIS METHODS (1) and (2) remain the same.

(3) The ~~board~~ department adopts and incorporates by reference the following publications:

(a) through (4) remain the same.

AUTH: 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.1102 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and shall be used in conjunction with and are supplemental to those definitions contained in 75-5-103, MCA. If not defined in this rule, terms used in this subchapter have the meanings set out in the definitions in ARM Title 17, chapter 30, subchapter 13.

(1) through (10) remain the same.

(11) "Montana pollutant discharge elimination system (MPDES) " means the system developed by the ~~board and~~ department for issuing permits for the discharge of pollutants from point sources into state waters. The MPDES is specifically designed to be compatible with the federal NPDES program established and administered by the EPA.

(12) through (35) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

17.30.1201 PURPOSE AND SCOPE (1) The purpose of this subchapter is to establish effluent limitations and standards, treatment requirements, standards of performance, and other requirements for point sources discharging wastes into state surface waters. These requirements, together with the rules in subchapter 13, are adopted to discharge the responsibilities of the ~~board~~ department under Title 75, chapter 5, parts 3 and 4, Montana Code Annotated, the Montana Water Quality Act, to adopt effluent limitations and standards, standards of performance, and treatment requirements for permits issued to point sources discharging into state surface waters. These requirements are adopted in a manner that implements the national

pollutant discharge elimination system (NPDES) established under sections 301, 302, 304, 306, 307, 316, 318, and 402 of the federal Clean Water Act.

AUTH: 75-5-304, MCA
IMP: 75-5-304, 75-5-401, MCA

17.30.1202 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter:

(1) through (27) remain the same.

(28) "MPDES" means the Montana pollutant discharge elimination system developed by ~~the Board of Environmental Review and~~ the Department of Environmental Quality for issuing permits for the discharge of pollutants from point sources into state waters.

(29) through (37) remain the same.

(38) The ~~board~~ department adopts and incorporates by reference the following federal regulations as part of the MPDES:

(a) through (c) remain the same.

AUTH: 75-5-304, MCA
IMP: 75-5-304, 75-5-401, MCA

17.30.1203 CRITERIA AND STANDARDS FOR IMPOSING TECHNOLOGY-BASED TREATMENT REQUIREMENTS IN MPDES PERMITS - VARIANCE PROCEDURES (1) through (13) remain the same.

(14) The ~~board~~ department adopts and incorporates by reference the following federal regulations as part of the MPDES:

(a) through (d) remain the same.

AUTH: 75-5-304, MCA
IMP: 75-5-304, 75-5-401, MCA

17.30.1206 TOXIC POLLUTANT EFFLUENT STANDARDS (1) through (3) remain the same.

(4) The ~~board~~ department adopts and incorporates by reference 40 CFR Part 129 (July 1, 2010), which establishes toxic effluent standards pursuant to section 307 of the federal Clean Water Act, as part of the MPDES. A copy of the incorporated federal regulation may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620.

AUTH: 75-5-304, MCA
IMP: 75-5-304, 75-5-401, MCA

17.30.1207 EFFLUENT LIMITATIONS AND STANDARDS OF PERFORMANCE (1) and (2) remain the same.

(3) The ~~board~~ department adopts and incorporates by reference 40 CFR Chapter I, Subchapter N (except 40 CFR Part 403) (July 1, 2010), which sets forth

federal effluent limitations and standards for existing sources and standards of performance for new sources, which are promulgated by EPA under sections 301, 304(b), 306(b), and 316(b) of the federal Clean Water Act. 40 CFR Part 403, which is excluded from this incorporation by reference, sets forth general pretreatment requirements for new and existing sources. A copy of the incorporated federal regulations may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620.

AUTH: 75-5-304, MCA
IMP: 75-5-304, 75-5-401, MCA

17.30.1211 TECHNOLOGY-BASED REQUIREMENTS FOR COOLING WATER INTAKE STRUCTURES FOR NEW FACILITIES (1) through (9) remain the same.

(10) In addition to the technology-based requirements of (7), (8), and (9), the owner or operator of a new facility must comply with any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure or monitoring requirements that the department determines are reasonably necessary to comply with applicable water quality standards adopted by the ~~board~~ department pursuant to 75-5-301 and 75-5-303, MCA.

(11) The ~~board~~ department adopts and incorporates by reference the following federal regulations as part of the MPDES:

(a) through (d) remain the same.

AUTH: 75-5-305, 75-5-401, MCA
IMP: 75-5-305, 75-5-401, MCA

17.30.1212 INFORMATION REQUIREMENTS FOR COOLING WATER INTAKE STRUCTURES FOR NEW FACILITIES (1) through (4) remain the same.

(5) The ~~board~~ department adopts and incorporates by reference the following federal regulations as part of the MPDES:

(a) through (c) remain the same.

AUTH: 75-5-305, 75-5-401, MCA
IMP: 75-5-305, 75-5-401, MCA

17.30.1304 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and shall be used in conjunction with and are supplemental to those definitions contained in 75-5-103, MCA.

(1) through (42) remain the same.

(43) "Montana pollutant discharge elimination system" (MPDES) means the system developed by the ~~board and~~ department for issuing permits for the discharge of pollutants from point sources into state waters. The MPDES is specifically designed to be compatible with the federal NPDES program established and administered by the EPA.

(44) "MPDES form" means any issued MPDES permit and any uniform form developed for use in the MPDES and prescribed in rules adopted by the ~~board~~

department, including MPDES forms, MPDES permit applications, and MPDES reporting forms.

(45) through (83) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

17.30.1322 APPLICATION FOR A PERMIT (1) through (12)(d)(ii) remain the same.

(iii) The following applicants shall sample and analyze for the pollutants listed in Appendix J, Table 2 of 40 CFR Part 122, and for any other pollutants for which the ~~board~~ department has established water quality standards applicable to the receiving waters:

(A) through (17) remain the same.

(18) The ~~board~~ department adopts and incorporates by reference the following federal regulations as part of the Montana pollutant discharge elimination system. Copies of these federal regulations may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

(a) through (f) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

17.30.1330 CONCENTRATED ANIMAL FEEDING OPERATIONS

(1) through (9) remain the same.

(10) The ~~board~~ department adopts and incorporates by reference the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620:

(a) and (b) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

17.30.1331 CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES AND AQUACULTURE PROJECTS (1) through (5) remain the same.

(6) The ~~board~~ department ~~hereby~~ adopts and incorporates ~~herein~~ by reference Appendix C of 40 CFR Part 122 which is an appendix to a federal agency rule setting forth criteria for determining whether a facility or operation merits classification as a concentrated aquatic animal production facility.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

17.30.1334 TECHNICAL STANDARDS FOR CONCENTRATED ANIMAL FEEDING OPERATION (1) through (11) remain the same.

(12) The ~~board~~ department adopts and incorporates by reference the following, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620-0901, or on the department's web site at http://deq.mt.gov/default.mcpx.

(a) through (13) remain the same.

AUTH: 75-5-201, 75-5-401, 75-5-802, MCA
IMP: 75-5-201, 75-5-401, 75-5-802, MCA

17.30.1341 GENERAL PERMITS (1) The department may issue general permits for the following categories of point sources which the ~~board~~ department has determined are appropriate for general permitting under the criteria listed in 40 CFR 122.28 as stated in ARM 17.30.1105:

(a) through (12) remain the same.

(13) The ~~board~~ department adopts and incorporates by reference the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620-0901:

(a) through (c) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

17.30.1342 CONDITIONS APPLICABLE TO ALL PERMITS The following conditions apply to all MPDES permits. Additional conditions applicable to MPDES permits are set forth in ARM 17.30.1344. All conditions applicable to MPDES permits must be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these rules must be given in the permit.

(1) through (14) remain the same.

(15) The ~~board~~ department adopts and incorporates by reference:

(a) and (b) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

17.30.1343 ADDITIONAL CONDITIONS APPLICABLE TO SPECIFIC CATEGORIES OF MPDES PERMITS (1) remains the same.

(2) The ~~board~~ department adopts and incorporates by reference the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620-0901:

(a) through (c) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

17.30.1344 ESTABLISHING LIMITATIONS, STANDARDS, AND OTHER PERMIT CONDITIONS (1) remains the same.

(2) The ~~board~~ department ~~hereby~~ adopts and incorporates ~~herein~~ by reference:

(a) through (i) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

17.30.1345 CALCULATING MPDES PERMIT CONDITIONS (1) through (11) remain the same.

(12) The ~~board~~ department adopts and incorporates by reference:

(a) through (f) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

17.30.1346 DURATION OF PERMITS (1) through (5) remain the same.

(6) The ~~board~~ department adopts and incorporates by reference sections 301(b)(2) (A), (C), (E), and (F) of the federal Clean Water Act, 33 USC 1251, et seq., which set forth deadlines for achieving effluent limitations and treatment of toxic pollutants.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

17.30.1354 DISPOSAL OF POLLUTANTS INTO WELLS, INTO PUBLICLY OWNED TREATMENT WORKS, OR BY LAND APPLICATION (1) through (3) remain the same.

(4) The ~~board~~ department adopts and incorporates by reference 40 CFR Part 125, subpart D, which is a series of federal agency rules setting forth criteria and standards for determining eligibility for a variance from effluent limitations based on fundamentally different factors (FDF).

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

17.30.1361 MODIFICATION OR REVOCATION AND REISSUANCE OF PERMITS (1) through (2)(c)(i)(A) remain the same.

(B) the ~~board~~ department has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or changed a water quality standard on which the permit condition was based; and

(C) remains the same.

(ii) for judicial decisions, a court of competent jurisdiction has remanded and stayed ~~board~~ department rules or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit

condition was based and a request is filed by the permittee in accordance with ARM 17.30.1365 within 90 days of judicial remand;

(d) through (3) remain the same.

(4) The ~~board~~ department adopts and incorporates by reference the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620-0901:

(a) through (g) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

17.30.1803 NOTIFICATION REQUIREMENTS (1) Upon passage of a resolution of intention to create a local water quality district, the commissioners shall submit a copy of the resolution to the department as notification that the commissioners intend to develop a district program and to apply for ~~board~~ department approval of the program. Submission of the resolution of intention to the department initiates the consultation process required by 75-5-311(1), MCA.

AUTH: 75-5-201, MCA
IMP: 75-5-311, MCA

17.30.1806 PROGRAM APPROVAL AND REPORTING (1) remains the same.

(2) Upon determination that the application is complete, the department ~~shall~~ must ~~immediately~~ notify the board of directors and ~~submit the completed application to the board, along with~~ provide a report and recommendation regarding approval of the district program. ~~At its next regularly scheduled meeting following the department's submission of the report and recommendation under this rule, the board shall~~ The department must hold a hearing on the application within 60 days following this notification.

(3) Prior to implementation of the local water quality district program in areas that have been added to the district, changes in the boundaries of a district must be described in a program amendment and submitted to the ~~board~~ department for approval as an amendment to the approved program in accordance with 75-5-311(7), MCA, and the procedures in (1) and (2) of this rule.

(4) One year after ~~board~~ department approval of a district program and annually thereafter, the board of directors shall submit to the department a report that evaluates the effectiveness of the district program. The report shall include a description of program activities, a discussion of the degree to which program goals, objectives, and schedules have been satisfied, monitoring results, a budget summary, and a description of the number and status of permits issued and enforcement actions initiated, as applicable to a particular district program.

(5) remains the same.

AUTH: 75-5-201, MCA
IMP: 75-5-311, MCA

Reason: In addition to the General Reason Statement, the proposed changes clarify that the department must now only notify the board of directors of the department's recommendation concerning the application for a water quality district and no longer notify the Board of Environmental Review. The rule also provides for the maximum number of days following notification of completeness in which the department must hold a hearing on the application. The 60-day period for the department to hold a hearing is substantially consistent with the previous rule, as the period between regular meetings of the Board of Environmental Review is approximately 60 days.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the department, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-432rulemaking @mt.gov, and must be received no later than 11:59 p.m., December 1, 2023.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the department at the above address no later than 5:00 p.m., November 23, 2023.

7. Kurt Moser, staff attorney for the Department of Environmental Quality, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written request may be mailed or delivered to the contact person in paragraph 5 or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail on July 5, 2023.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Angela Colamaria
ANGELA COLAMARIA
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environment Quality

Certified to the Secretary of State September 26, 2023.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.156.403, 24.156.405, 24.156.813, 24.156.1622, and 24.156.1623 and the repeal of ARM 24.156.1621, 24.156.1624, and 24.156.1701 pertaining to physician assistants	))))))	NOTICE OF EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 25, 2023, the Board of Medical Examiners (agency) published MAR Notice No. 24-156-94 pertaining to the proposed amendment and repeal of the above-stated rules at page 813 of the 2023 Montana Administrative Register, Issue Number 16.

2. A public hearing was held on September 15, 2023. A subsequent public hearing will be held to accept further comments. Comments previously submitted for this rulemaking will be retained and considered by the agency.

3. On October 30, 2023, at 8:30 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/89927967725
Meeting ID: 899 2796 7725, Passcode: 378244
-OR-
b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 899 2796 7725, Passcode: 378244

4. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., October 30, 2023.

5. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on October 23, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

BOARD OF MEDICAL EXAMINERS
JAMES GUYER, M.D., PRESIDENT

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 26, 2023.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New RULES I through V, the amendment of ARM 36.12.101 through 36.12.103, 36.12.110 through 36.12.113, 36.12.116, 36.12.117, 36.12.121, 36.12.1401, 36.12.1501, 36.12.1601, 36.12.1702 through 36.12.1704, 36.12.1706, 36.12.1707, 36.12.1801, 36.12.1903, and 36.12.1904, and the repeal of ARM 36.12.1301, 36.12.1701, 36.12.1705, and 36.12.1901 pertaining to water right permitting	)))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On October 26, 2023, at 11:00 a.m., the Department of Natural Resources and Conservation (DNRC) will hold a public hearing at the DNRC building in the Montana Conference Room, First Floor, located at 1539 Eleventh Avenue, Helena, Montana, and via Zoom, to consider the proposed adoption, amendment, and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting: https://mt-gov.zoom.us/j/88970005425?pwd=a094Z01PWkR2RVFMS1cxK1NKMlZKdz09; Meeting ID: 889 7000 5425; Password: 273124; or

b. Dial by Telephone: +1 646 558 8656; Meeting ID: 889 7000 5425; Password: 273124; Find your local number: https://mt-gov.zoom.us/u/kcClUefh60

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on October 16, 2023, to advise us of the nature of the accommodation that you need. Please contact Jamie Price, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, 406-444-6615, or e-mail DNRCOAH@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I VARIANCE REQUESTS (1) An applicant may make a written request for a variance from the requirements of ARM 36.12.121 or 36.12.1702 to the

appropriate regional office on a form provided by the department. The variance request must be:

(a) postmarked or sent electronically to the department by the deadline established at the preapplication meeting; or

(b) if a preapplication meeting is not held, the applicant may include a request for variance with a filed application, or as part of a deficiency response pursuant to ARM 36.12.1501.

(2) a variance request that is not submitted within the timeframe identified in (a) or (b) shall be denied.

(3) The department shall grant or deny the variance within 30 business days of receipt of the written request. The department's grant of a variance request may impose conditions necessary to ensure the application materials and data provided is sufficient to evaluate the applicable criteria.

AUTH: 85-2-113, MCA
IMP: 85-2-302, 85-2-307, 85-2-311, 85-2-330, 85-2-336, 85-2-341, 85-2-343, 85-2-344, 85-2-360, 85-2-361, 85-2-362, 85-2-402, 85-2-506, 85-2-508, MCA

REASON: HB 114 from the 2023 legislative session modified the timelines and process for application review and increased importance of a preapplication meeting. The current rules include multiple provisions that authorize the department to grant a variance from certain requirements. NEW RULE I is necessary to consolidate the rules for a variance request and provide timelines for approval or denial of a variance request consistent with the requirements of HB 114.

NEW RULE II PREAPPLICATION MEETING (1) If the applicant completes a preapplication meeting with the department, the department will provide for a discounted application filing fee provided for in ARM 36.12.103 and expedited timelines provided for in ARM 36.12.1501.

(2) A written request for a preapplication meeting must identify the following elements of the proposed permit or change in appropriation:

(a) the flow rate and volume of water required;

(b) the point of diversion;

(c) the place of use;

(d) the source of water;

(e) the purpose;

(f) for changes, the water right(s) proposed to be changed;

(g) for changes, an explanation of historical use of the right(s) proposed for change;

(h) any proposed places of storage, if applicable; and

(i) for applications proposing a new well or wells, the well depth(s) and location.

(3) A preapplication meeting must be documented by a department-provided checklist that identifies:

(a) all necessary technical analyses and whether the analyses will be completed by the applicant or the department;

(b) applicable aquifer testing requirements, measurement requirements, variances to be requested, or planned mitigation; and

(c) any additional information necessary for completion of the technical analyses identified by the checklist under (3)(a).

(4) If the technical analyses are to be completed by the department, the 45-day department deadline for completion of the technical analyses will be set upon receipt of the preapplication fee, receipt of the information provided for in (3)(c), and signed preapplication checklist. These items must be received within 180 days of the preapplication meeting.

(5) If the technical analyses are to be completed by the applicant, the 45-day department deadline for scientific credibility review will be set upon receipt of the preapplication fee, receipt of the applicant's technical analyses, and signed preapplication checklist. These items must be received within 180 days of the preapplication meeting.

(6) An applicant does not qualify for a discounted filing fee provided for in ARM 36.12.103 and expedited timelines provided for in ARM 36.12.1501 if:

(a) upon submittal of the application to the department, the applicant has changed any element of the proposed application after the 180-day timeline in (4) or (5); or

(b) the application is not filed within 180 days of the department's completion of technical analyses.

(7) The preapplication meeting procedure for a combined permit and change application documented on the preapplication checklist, will be conducted as follows:

(a) The applicant will be required to complete two preapplication meetings pursuant to (1) through (3) to receive a full discount of the application fees. Each preapplication meeting will require the fee set forth in ARM 36.12.103.

(b) A preapplication meeting for the permit will be conducted first. The technical analyses completed for the permit application will identify information necessary to consider for the change application.

(c) A preapplication meeting for the change will be conducted once the applicant has gathered the information needed under (2).

(d) The combined permit and change application must be filed with the department within 180 days from the date of completion of the technical analyses for the change application. The 180-day timeframe will apply to both the permit and change application and will not start until completion of the technical analyses for the change application.

(8) Any technical analyses completed by the department expire one year from the technical analysis completion date.

AUTH: 85-2-302, MCA

IMP: 85-2-302, 85-2-307, 85-2-311, 85-2-330, 85-2-336, 85-2-341, 85-2-343, 85-2-344, 85-2-360, 85-2-361, 85-2-362, 85-2-402, 85-2-506, 85-2-508, MCA

REASON: HB 114 from the 2023 legislative session modified the timelines and process for application review, increased importance of a preapplication meeting, and added the opportunity for public comment on permit and change applications.

New Rule II is necessary to establish the requirements and procedures for a preapplication meeting.

The fee associated with preapplication meetings is assessed in ARM 36.12.103 as a new fee and the projected cumulative net impact of this fee is $0. The reason the projected cumulative net impact is $0 is because the applicant receives a filing fee discount on the application if they complete the preapplication meeting process and the preapplication fee is then applied to the discounted application fee.

NEW RULE III TECHNICAL ANALYSES (1) Technical analyses may be required for permit and change applications to provide the minimum information necessary for the department to complete a criteria assessment under 85-2-311, MCA for permits, or 85-2-402, MCA for changes. The department will conduct technical analyses necessary to evaluate criteria if not provided by the applicant. It remains the applicant's burden to prove the criteria.

(2) For surface water permit applications, the following technical analyses are required:

(a) a surface water analysis, which must include:

(i) for perennial or intermittent streams where measurement records are available, the gage name, location, period of record, and calculated median of the mean monthly flow rate and volume;

(ii) for perennial or intermittent streams where measurement records are not available, an estimated mean monthly flow rate and volume, and identify the estimation technique and basin characteristics used for the estimation;

(iii) for ephemeral streams, an explanation of the method used to calculate mean annual runoff and associated climate and drainage area data; and

(iv) for lakes, the source of the bathymetric data and associated volume or description of the method and associated data used to calculate volume;

(b) an analysis of the area of potential impact.

(3) For surface water change applications, the following technical analyses are required:

(a) a historical use analysis;

(b) an analysis of impacted surface water sources;

(c) for applications where aquifer recharge is proposed for mitigation, an analysis of the monthly accretions to affected hydraulically connected surface water(s); and

(d) for irrigation water rights changing the place of use or purpose, a return flow analysis of historical return flows and projected return flows for the amount of water being changed. This analysis must include:

(i) amount of return flow;

(ii) location of return flow; and

(iii) if water rights are identified which will be impacted by a change in return flow, the return flow analysis must include a monthly breakdown of the rate and timing of return flow and evaluate impacts to the identified rights.

(4) For groundwater permit applications in an open basin, the following technical analyses are required:

(a) a groundwater analysis, which must include:

(i) aquifer transmissivity and storage coefficient;

(ii) maximum drawdown and remaining available water column in the proposed point of diversion(s);

(iii) 0.01-foot drawdown contour;

(iv) location and distance between the proposed point of diversion(s) and the 0.01-foot drawdown contour;

(v) annual groundwater flux through the 0.01-foot drawdown contour, annual groundwater recharge, or annual groundwater discharge. The quantification must be in acre-feet per year; and

(vi) all groundwater rights within the 0.01-foot drawdown contour or area of potential impact;

(vii) 1-foot drawdown contour, which is based on five years of constant pumping, which is derived from the requested annual volume and apportioned monthly based on the proposed period of diversion;

(viii) distance and location on a map between the proposed point of diversion(s) and the 1-foot drawdown contour;

(ix) all groundwater rights within the 1-foot drawdown contour; and

(x) remaining available water column for each groundwater point of diversion identified in (ix);

(b) a surface water depletion analysis, which must include:

(i) all hydraulically connected surface water(s) to the source aquifer for the proposed point of diversion; and

(ii) annual consumed volume and monthly rate and volume of net depletion to hydraulically connected surface water(s);

(c) a surface water analysis, which must include:

(i) for perennial or intermittent streams where measurement records are available, the gage name, location, period of record, and calculated median of the mean monthly flow rate and volume;

(ii) for perennial or intermittent streams where measurement records are not available, an estimated mean monthly flow rate and volume, and identify the estimation technique and basin characteristics used for the estimate;

(iii) for ephemeral streams, an explanation of the method used to calculate mean annual runoff and associated climate and drainage area data; and

(iv) for lakes, the source of the bathymetric data and associated volume or description of the method and associated data used to calculate volume;

(d) an analysis of the area of potential impact.

(5) For groundwater change applications, the following technical analyses are required:

(a) a historical use analysis;

(b) a groundwater analysis, which must include:

(i) aquifer transmissivity and storage coefficient;

(ii) maximum drawdown and remaining available water column in the proposed point of diversion(s);

(iii) 1-foot drawdown contour, which is based on five years of constant pumping, which is derived from the requested annual volume and apportioned monthly based on the proposed period of diversion;

(iv) the distance and location on a map between the proposed point of diversion(s) and the 1-foot drawdown contour;

(v) all groundwater rights within the 1-foot drawdown contour; and

(vi) remaining available water column for each groundwater point of diversion identified in (v);

(c) surface water depletion analysis, which must include:

(i) all hydraulically connected surface water(s) to the source aquifer for the proposed point of diversion; and

(ii) historic and proposed annual consumed volumes and monthly rate and volume of net depletion to hydraulically connected surface water(s); and

(iii) a comparison of the historical net depletion and new net depletion to hydraulically connected surface water(s);

(d) for irrigation water rights changing the place of use or purpose, a return flow analysis of historical return flows and projected return flows for the amount of water being changed. This analysis must include:

(i) amount of return flow;

(ii) location of return flow; and

(iii) if water rights are identified which will be impacted by a change in return flow, the return flow analysis must include a monthly breakdown of the rate and timing of return flow and evaluate impacts to the identified rights.

(6) For groundwater permit applications in a closed basin, in addition to a hydrogeologic report conducted pursuant to 85-2-361, MCA, the following technical analyses are required:

(a) for applications with proposed mitigation, an analysis of the net effect to hydraulically connected surface water(s);

(b) for applications where aquifer recharge is proposed for mitigation, an analysis of the monthly accretions to affected hydraulically connected surface water(s).

(7) Technical analyses completed by the applicant must be submitted with the permit or change application.

(8) The department will evaluate technical analyses completed by the applicant for scientific credibility.

AUTH: 85-2-113, MCA

IMP: 85-2-302, 85-2-307, 85-2-311, 85-2-330, 85-2-336, 85-2-341, 85-2-343, 85-2-344, 85-2-360, 85-2-361, 85-2-362, 85-2-402, 85-2-506, 85-2-508, MCA

REASON: HB 114 from the 2023 legislative session modified the timelines and process for application review and increased importance of a preapplication meeting, which includes consideration of requisite technical analysis. New Rule III is necessary to identify the required technical analysis for the different application types and establishes the department's role in completion and evaluation of technical analyses.

NEW RULE IV FILING A PERMIT APPLICATION AND FORM ACCEPTANCE (1) A permit application (Form No. 600) must be filed when an

applicant desires to use surface water or groundwater that does not meet an exception to permit requirements under 85-2-306, MCA.

(2) The department will not accept a permit application and will not assign a priority date if any of the following items are missing:

(a) the flow rate and volume of water;

(b) the point of diversion;

(c) the place of use;

(d) the source of water;

(e) the purpose;

(f) the applicant's signature;

(g) for a groundwater well, aquifer testing results conforming to ARM 36.12.121;

(h) for projects proposed in sage grouse habitats designated as a core area, general habitat, or a connectivity area, a letter from the Montana Sage Grouse Habitat Conservation Program stating the project is consistent with Executive Orders 12-2015 and 21-2015; and

(i) the appropriate filing fee in ARM 36.12.103.

(3) Separate applications are required for:

(a) each source of supply; or

(b) different purposes or places of use supplied by different points of diversion on the same source. If the entire project is manifold into one system, then a single application is allowed.

(4) One application is allowed for:

(a) one purpose and multiple points of diversion on the same source; and

(b) for several purposes, if all the points of diversion supply all of the same purposes.

(5) The time needed to complete construction and put the water to beneficial use must be identified. Information must be included in the application materials that justify the requested time.

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, 85-2-310, MCA

REASON: New Rule IV is necessary to consolidate the existing application receipt rules (ARM 36.12.1301) and filing a permit application rules (ARM 36.12.1701) into one rule, to improve readability of rule, and to streamline the rule consistent with the sequencing of the application process.

NEW RULE V FILING A CHANGE APPLICATION AND FORM ACCEPTANCE (1) An applicant who desires to change the point of diversion, place of use, purpose of use, or place of storage of a water right must file an application to change a water right (Form No. 606) and any applicable addendums.

(2) The department will not accept a change application if any of the following items are missing:

(a) the water right element(s) proposed for change;

(b) the water right number for each water right changed;

(c) the proposed diverted flow rate and diverted volume of water for each changed right;

(d) the applicant's signature;

(e) for projects proposed in sage grouse habitats designated as a core area, general habitat, or a connectivity area, a letter from the Montana Sage Grouse Habitat Conservation Program stating the project is consistent with Executive Orders 12-2015 and 21-2015; and

(f) the appropriate filing fee in ARM 36.12.103.

(3) An application for a temporary change must meet the same rule requirements as those for a permanent change application.

(4) In addition to the change application rules, an applicant proposing to temporarily change to instream flow must submit the information required under 85-2-407 and 85-2-408, MCA, or 85-2-436, MCA.

(5) Only an owner of record, as shown in the department's water right records, can apply to change a water right, except if a change application is for a water right lease pursuant to 85-2-436, MCA, the change applicant must be the Montana Department of Fish, Wildlife and Parks.

(a) For water rights that are co-owned, all owners shall sign the application form consenting to the change.

(6) Multiple water rights may be changed on one application if the place of use and purpose will be exactly the same for each water right, and all water rights will share a common conveyance system.

(7) The time needed to complete and put the change into operation must be identified. Information must be included in the application materials that justify the requested time.

(8) For a change application that only adds stock tanks to an existing stock water system:

(a) Form No. 606 and any applicable addendum(s) must be completed and must describe the details of the proposed project;

(b) the applicant must explain the extent of the historical use, including the flow rate and volume, for each water right proposed for change;

(c) the applicant must provide information to show that the historical diverted flow rate will be adequate for the new use; and

(d) for changes from instream stock rights based on 85-2-222, MCA, to stock tank(s), the maximum flow rate authorized for the new use will be 35 gallons per minute unless the applicant demonstrates a higher historical rate.

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, 85-2-402, MCA

REASON: New Rule V is necessary to consolidate the existing application receipt rules (ARM 36.12.1301) and filing a change application rules (ARM 36.12.1901) into one rule, to improve readability of rule, and to streamline the rule consistent with the sequencing of the application process.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

36.12.101 DEFINITIONS In addition to definitions provided for in 82-2-102, MCA, and ~~Unless~~ unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act, and as used in these rules:

(1) remains the same.

(2) "Amount" refers to both a flow rate in gallons per minute (~~gpm~~ GPM), or cubic feet per second (~~cfs~~ CFS), and a volume of water in acre-feet (~~af~~ AF).

(3) through (8) remain the same.

(9) "CFS" ~~"Cfs"~~ means a flow rate of water in cubic feet per second and is equivalent to 448.8 gallons per minute. Applications for a flow rate of less than one CFS ~~cfs~~ will be converted to gallons per minute.

(10) through (16) remain the same.

~~(17) "Criteria addendum" means that additional portion of an application on which substantial credible information must address the criteria listed in 85-2-311 and 85-2-402, MCA.~~

(18) and (19) remain the same but are renumbered (17) and (18).

~~(20) "Department" means the Montana Department of Natural Resources and Conservation (DNRC).~~

(21) through (24) remain the same but are renumbered (19) through (22).

~~(25) "Existing right", in addition to its definition in 85-2-102, MCA, includes any appropriation of water commenced prior to July 1, 1973, if completed according to the law as it existed when the appropriation was begun.~~

(26) remains the same but is renumbered (23).

~~(27)~~(24) "Flow rate" is a measurement of the rate at which water flows or is diverted, impounded, or withdrawn from the source of supply for beneficial use, and commonly measured in cubic feet per second (CFS ~~cfs~~) or gallons per minute (GPM ~~gpm~~).

(28) remains the same but is renumbered (25).

~~(29)~~(26) "GPM" ~~"gpm"~~ means a flow rate of water in gallons per minute.

(30) through (34) remain the same but are renumbered (27) through (31).

~~(35)~~(32) "Means of diversion" means the type of structures, facilities, or methods used to appropriate, impound, or collect water. ~~Examples include, but are not limited to the following:~~

~~(a) dike;~~

~~(b) dam;~~

~~(c) ditch;~~

~~(d) headgate;~~

~~(e) infiltration gallery;~~

~~(f) pipeline;~~

~~(g) pump;~~

~~(h) pit; or~~

~~(i) well.~~

(36) remains the same but is renumbered (33).

~~(37)~~(34) "Multiple domestic use" means a domestic use by more than one household or dwelling characterized by long-term occupancy as opposed to guests. ~~Examples are domestic uses by:~~

~~(a) colonies;~~

~~(b) condominiums;~~
~~(c) townhouses; and~~
~~(d) subdivisions.~~

(38) through (46) remain the same but are renumbered (35) through (43).

~~(47) "Permit" means a permit to appropriate water issued by the department under Title 85, chapter 2, part 3, MCA.~~

~~(48) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity (see 85-2-102, MCA).~~

(49) through (54) remain the same but are renumbered (44) through (49).

~~(55) "Pre-application review" means the applicant or the applicant's attorney or consultant or others who may know about the proposed project have met with the department in person, via teleconference, or via video conference to discuss details of the proposed project and application.~~

(56) through (58) remain the same but are renumbered (50) through (52).

~~(59) "Project" means a place of use that has its own identifiable flow rate, volume, and means of diversion.~~

(60) through (72) remain the same but are renumbered (53) through (65).

(66) "Supplemental rights" means separate water rights for the same purpose, owned by the same water user, and used on overlapping places of use.

(73) through (75) remain the same but are renumbered (67) through (69).

~~(76) "Temporary permit" means a permit to appropriate water granted pursuant to Title 85, chapter 2, part 3, MCA, for a specific period of time and with an automatic expiration date.~~

(77) through (80) remain the same but are renumbered (70) through (73).

~~(81)~~(74) "Volume" means the acre-feet of water per year. Twelve acre-inches or 325,851 gallons are equal to one acre-foot.

(82) through (87) remain the same but are renumbered (75) through (80).

AUTH: 2-4-201, 85-2-113, 85-2-308, 85-2-370, MCA
IMP: 85-2-113, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, ~~85-2-350~~, 85-2-351, 85-2-360, 85-2-361, 85-2-362, 85-2-364, 85-2-368, 85-2-370, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-418, MCA

REASON: This amendment is necessary to remove terms already defined in statute, to remove unnecessary examples from defined terms, and to update or add other definitions to provide clarity to applicants.

36.12.102 FORMS (1) The following necessary forms for implementation of the act and these rules are available from the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana 59620-1601 and its Water Resources regional offices, or on the ~~World Wide Web at http://dnrc.mt.gov/wrd/default.asp~~ department's website. The department may revise as necessary the following forms to improve the administration of these rules and the applicable water laws:

(a) Form No. 600P, "Permit Preapplication Meeting";

~~(a)~~(b) Form No. 600, "Application for Beneficial Water Use Permit,"~~,~~ which must be submitted ~~for groundwater developments in excess of 35 gpm or ten acre-feet per year and surface water appropriations~~ when an applicant desires to use surface water or groundwater that does not meet an exception to permit requirements under 85-2-306, MCA;

~~(b)~~(c) Form No. 602, "Notice of Completion of Groundwater Development,"~~,~~ which must be submitted for groundwater developments with a maximum use of 35 GPM ~~gpm~~ or less, not to exceed ten acre-feet per year;

(c) and (d) remain the same but are renumbered (d) and (e).

(f) Form No. 606P, "Change Preapplication Meeting";

(e) through (i) remain the same but are renumbered (g) through (k).

~~(j) Form No. 615, "Water Conversion Table";~~

(k) through (q) remain the same but are renumbered (l) through (r).

~~(r)~~(s) Form No. 634, "Replacement Well Notice,"~~,~~ which must be submitted for municipal wells that do not exceed 450 GPM ~~gpm~~, or for all other wells that do not exceed 35 GPM ~~gpm~~ and ten acre-feet per year;

(s) remains the same but is renumbered (t).

~~(t)~~(u) Form No. 636, ~~"Interim Permit Request";~~ "Petition to Subordinate a State Water Reservation";

(u) through (y) remain the same but are renumbered (v) through (z).

~~(z)~~(aa) Form No. 642, "DNRC Ownership Update, ~~Exempt (Reserved)~~ Split and Sever of a Water Right,"~~, which must be submitted for a~~ where a portion of the water right ~~that will be exempted (reserved) from a sale of land, and for which the seller will retain ownership of the water right~~ place of use is severed;

~~(aa)~~(ab) Form No. 643, "DNRC Ownership Update, Severed Water Right,"~~,~~ which must be submitted where a water right will be severed from the entire place of use ~~land. A severed water right does not involve a land sale~~;

(ab) remains the same but is renumbered (ac).

~~(ac)~~(ad) Form No. 645, "Permit Registration for Groundwater Use within the National Park Service Compact Area,"~~,~~ which must be submitted for groundwater developments with a maximum use of 35 GPM ~~gpm~~ or less, not to exceed ten acre-feet per year;

~~(ad)~~(ae) Form No. 646, "Geothermal Heating/Cooling Notice of Completion,"~~,~~ which must be submitted for groundwater developments for a geothermal purpose with a maximum use of 350 GPM ~~gpm~~;

(ae) remains the same but is renumbered (af).

~~(af) Form No. 648, "Petition to Subordinate a State Water Reservation";~~

~~(ag) Form No. 649, "Surface Water Measurement Data Form";~~

~~(ah) Form No. 650, "Temporary Lease of Appropriation Right";~~

~~(ai)~~(ag) Form No. 651, "Petition to Modify a Permit or Change Authorization"; ~~and~~

~~(aj)~~(ah) Form No. 652, "Petition for Stream Depletion Zone~~.~~";

(ai) Form No. 653, "Variance Request," which must be submitted for variance requests in [NEW RULE I];

(aj) Form No. 654, "Public Comment," which must be submitted for public comment under 85-2-307(4), MCA; and

(ak) Form No. 655, "Application Amendment Form," which must be submitted to modify an application under ARM 36.12.1401.

AUTH: 85-2-113, MCA
IMP: 85-2-113, 85-2-302, 85-2-306, 85-2-307, 85-2-311, 85-2-316, 85-2-402, 85-2-424, 85-20-401, MCA

REASON: HB 114 from the 2023 legislative session modified the timelines and process for application review and increased importance of a preapplication meeting. The current rules include multiple provisions that authorize the department to grant a variance from certain requirements. New Rule I provides the requirements for a variance request. The current rule references forms that are no longer in use. This amendment is necessary to implement HB 114 and New Rule I and to remove forms that are no longer in use.

36.12.103 FORMS AND SPECIAL FEES (1) remains the same.

(2) The department will assess the following filing fees:

(a) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 ~~and 85-2-507~~, MCA, or filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute, there shall be a fee of ~~$1000~~ $2900. If the application meets the requirements for a ~~pre-application review~~ preapplication meeting ~~as determined by the department~~ under [NEW RULE II], the fee shall be ~~$800~~ $1600;

(b) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 ~~and 85-2-507~~, MCA, or filed under a compact pursuant to Title 85, chapter 20, MCA, for a groundwater appropriation of 35 gallons per minute or less, there shall be a fee of ~~$200~~ $400;

(c) For an Application for Beneficial Water Use Permit, Form No. 600, not filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, nor in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, nor a controlled groundwater area pursuant to 85-2-506 ~~and 85-2-507~~, MCA, nor filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute there shall be a fee of ~~$800~~ $2500. If the application meets the requirements for a ~~pre-application review~~ preapplication meeting under [NEW RULE II] ~~as determined by the department~~, the fee shall be ~~$600~~ $1200;

~~(d) $150, in addition to the fees in either (a), (b), or (c) for an Interim Permit Request, Form No. 636;~~

~~(e)~~(d) ~~$125~~ $250 for a Notice of Completion of Groundwater Development, Form No. 602, filed for groundwater developments with a maximum use of 35 GPM ~~gpm~~ or less, not to exceed ten acre-feet per year;

~~(f)~~(e) ~~$125~~ $250 for an Application for Provisional Permit for Completed Stockwater Pit or Reservoir, Form No. 605, filed for a pit or reservoir with a maximum capacity less than 15 acre-feet;

~~(g)~~(f) ~~$900~~ $2500 for an Application to Change a Water Right, Form No. 606, except for an application that meets the requirements for a ~~pre-application~~ preapplication meeting under [NEW RULE II] ~~review as determined by the department~~, where there shall be a ~~$700~~ $1500 fee;

~~(h)~~(g) ~~$200~~ $400 for an Application to Change a Water Right, Form No. 606 in the following instances:

(i) if the change application concerns a replacement well greater than 35 GPM ~~gpm~~ or ten acre-feet, or a municipal well that ~~does not~~ exceeds 450 GPM ~~gpm~~, or replacement reservoir located on the same source; or

(ii) remains the same.

~~(i)~~(h) ~~$200~~ $400 for an Application for Extension of Time, Form No. 607;

~~(j)~~(i) ~~$50~~ $100, plus ~~$10~~ $20 for each water right transferred after the first water right, for a Water Right Ownership Update, Form No. 608. The total amount shall not exceed ~~$300~~ $600;

~~(k)~~(j) ~~$25~~ $50 for an Objection to Application, Form No. 611;

~~(l)~~(k) ~~$200~~ $400 for an Application to Renew a Temporary Water Right Change, Form No. 626;

~~(m)~~(l) ~~$1500~~ $3000 for a Controlled Groundwater Area Petition, Form No. 630. The petitioner shall also pay:

(i) through (vi) remain the same.

~~(n)~~(m) ~~$1500~~ $3000 for a Petition for Closure of a Highly Appropriated Basin, Form No. 631. The petitioner shall also pay:

(i) through (vi) remain the same.

~~(o)~~(n) ~~$100~~ $150 for a Replacement Well Notice, Form No. 634;

~~(p)~~(o) ~~$50~~ $200 for a Redundant Well Construction Notice, Form No. 635;

~~(q)~~(p) ~~$200~~ $1000 for a Reinstatement Request, Form No. 637;

~~(r)~~(q) ~~$800~~ $1600 for a Water Reservation Application for Instream Flow, Form No. 638. The applicant shall also pay:

(i) through (iv) remain the same.

~~(s)~~(r) ~~$50~~ $150 for each divided water right on Form No. 641, DNRC Ownership Update, Divided Interest;

~~(t)~~(s) ~~$50~~ $150 for each exempted water right on Form No. 642, DNRC Ownership Update, ~~Exempt (Reserved)~~ Split or Split and Sever of a Water Right;

(u) and (v) remain the same but are renumbered (t) and (u).

~~(w)~~(v) ~~$200~~ $400 for Form No. 645, Permit Registration for Groundwater Use Within the National Park Service Compact Area;

~~(x)~~(w) ~~$200~~ $400 for Form No. 646, Geothermal Heating/Cooling Notice of Completion;

(y) remains the same but is renumbered (x).

~~(z) $200 for Form No. 650, Temporary Lease of Appropriation Right;~~

~~(aa)~~(y) ~~$400~~ $800 for Form No. 651, Petition to Modify a Permit or Change Authorization; ~~and~~

~~(ab)~~(z) ~~$750~~ $1500 for Form No. 652, Petition for Stream Depletion Zone~~.~~;

(aa) $500 for Form No. 600P, Permit Preapplication Meeting. This fee will be credited to the filing fee of Form No. 600 for preapplication meetings that meet the requirements of [NEW RULE II]; and

(ab) $500 for Form No. 606P, Change Preapplication Meeting. This fee will be credited to the filing fee of Form No. 606 for preapplication meetings that meet the requirements of [NEW RULE II].

(3) There shall be no fees charged for filing the following forms:

(a) through (d) remain the same.

(e) Form No. 636, Petition to Subordinate a State Water Reservation;

(e) remains the same but is renumbered (f).

~~(f)~~(g) Form No. 640, Certification of Water Right Ownership Update;

~~(g) Form No. 648, Petition to Subordinate a State Water Reservation; and~~

~~(h) Form No. 649, Surface Water Measurement Data Form.~~

(h) Form No. 653, Variance Request;

(i) Form No. 654, Public Comment; and

(j) Form No. 655, Application Amendment Form.

(4) The department will charge special service fees not to exceed reasonable amounts, including, but not limited to the following:

(a) and (b) remain the same.

(c) reasonable public information access fees including copies, blueprints or tracings, audio copies of a hearing, and other requests as per ~~2-6-110, MCA, and~~ department public information policy.

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-302, 85-2-306, 85-2-307, 85-2-311, 85-2-312, 85-2-314, 85-2-402, 85-2-426, ~~85-2-427,~~ 85-2-436, 85-20-401, MCA

REASON: Fees associated with processing applications have not been updated since 2013. The legislature approved funding for HB114 with a 50/50 split between general fund and state special revenue funds needed for implementation. The fee increases proposed in this rule package provide the necessary revenue from state special revenue to hire the staff to meet the deadlines in HB114. Outdated forms need to be removed and new forms associated with HB 114 need to be added. The titles of some forms are being updated to clarify for consistency with the purpose of the form.

36.12.110 LEGAL LAND DESCRIPTION STANDARDS (1) Primary ~~or secondary~~ points of diversion must be described as one or more of the following:

(a) and (b) remain the same.

(c) government lot, 1/4 section, section, township, range, and county; ~~or~~

(d) certificate of survey number with ~~or without~~ a lot number, if present, 1/4 section, section, township, range, and county; or~~.~~

(e) latitude/longitude coordinates and the geodetic reference system used to collect the coordinates.

(2) remains the same.

(3) Transitory diversions must be described as the most upstream diversion point and the most downstream diversion point. ~~a measurement in stream miles~~

~~downstream from the upstream point. For example the transitory diversion will extend from the upstream point to approximately one mile downstream.~~

(4) If secondary diversions are described, they must be identified as "secondary" and meet one of the description standards in (1).

(5) The legal land description for the place of use must be listed to the nearest ~~reasonable and~~ concise legal land description. ~~For example, it would be appropriate to describe 20 acres in the N½NWNW rather than ten acres in the NWNWNW and ten acres in the NENWNW. For a subdivision covering most of the SW, it would be appropriate to describe the place of use as the SW rather than the NWSW, NESW, SWSW, and SESW.~~

AUTH: 85-2-113, MCA

IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, ~~85-2-350,~~ 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, ~~85-2-437, 85-2-439,~~ 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA

REASON: This amendment is necessary to clarify legal description standards approved by the department including the use of latitude and longitude coordinates. The examples removed from (3) and (5) are more appropriate for explanatory documents or forms. The removal of the alternative method for describing transitory points of diversion is necessary to increase consistency.

36.12.111 MAP STANDARDS (1) ~~A United States geological survey (USGS) quadrangle maps or United States Department of Agriculture (USDA)~~ Maps or aerial photographs must be included with the application and the following items must be clearly identified on the map:

(a) through (d) remain the same.

(e) all ~~past and~~ proposed points of diversion;

(f) all ~~past and~~ proposed places of use;

(g) ~~past and~~ proposed reservoir locations, if applicable; ~~and~~

(h) ~~past and~~ proposed conveyance facilities ~~ditch or pipeline locations.~~; and

(i) date the aerial photograph was taken, if available.

~~(2) Maps must reflect the place of use of all associated water rights.~~

~~(3)~~(2) Additional maps must be submitted if the information on one map cannot convey the required information clearly. ~~and must be of the same scale so that they can be overlain~~.

~~(4)~~(3) For change applications ~~to irrigation water rights~~, in addition to the information ~~map~~ required to be mapped in (1) ~~and (2)~~, the following items must be clearly identified on the map: ~~a copy of the Water Resources Survey map, if available for the land affected by the change, shall be submitted with the historically irrigated acreage identified.~~

(a) all past points of diversion;

(b) all past places of use;

(c) all past reservoir locations, if applicable; and

(d) all past locations of conveyance facilities.

~~(5) For change applications, all historically irrigated acreage must be identified on an aerial photograph that shows the date the aerial photo was taken.~~

~~(6) In addition, a county plat map obtained from the county office may be submitted. The county plat map must show the same information as required under (1).~~

AUTH: 85-2-113, MCA
IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, ~~85-2-350~~, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, ~~85-2-437, 85-2-439,~~ 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA

REASON: Applicants currently have access to a wide variety of maps and aerial photographs that were not readily available at the time this rule was written. The amendment to (1) is necessary to allow the use of modern map and photograph resources and not unduly restrict the source of the map or photograph. The amendment to (2) is necessary to recognize that modern technology can easily overlay maps of different scales, and the requirement is no longer useful or necessary. The amendment to (3) is necessary to clarify the requirements for each application type. The amendment removes the requirement that the applicant provide a copy of the WRS map because the DNRC possesses complete WRS maps.

36.12.112 PERIOD OF DIVERSION AND PERIOD OF USE STANDARDS

(1) The department will use the following standards for period of diversion and use based on the purpose of beneficial water use: ~~Deviations from the standards listed below require information supporting the period of diversion or use requested in an application:~~

(a) through (c)(v) remain the same.

(vi) climatic area VI April 25 to October 5

(2) remains the same.

~~(3) Applications for temporary permits must identify the beginning and ending month, day, and year.~~

~~(4)~~(3) Period of use for purposes other than domestic, stock, or irrigation ~~The basis for the requested periods for other uses~~ must be explained and documented based on the operation of the project.

(4) Deviations from the period of use standards listed in (1) must be explained and documented based on the operation of the project.

AUTH: 85-2-113, MCA
IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, ~~85-2-350,~~ 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, ~~85-2-437, 85-2-439,~~ 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA

REASON: The addition of climatic region VI is necessary to ensure all of the climatic regions of the state are identified in rule. Section (3) which is being deleted relates to start and end dates for a temporary permit and does not refer to period of diversion or period of use. The amendments to (3) and (4) are necessary to clarify when additional information regarding the period of use must be provided and the information required to support a deviation from the period of use standards.

36.12.113 RESERVOIR STANDARDS (1) An application ~~project~~ involving a new or existing reservoir must identify the capacity of the reservoir and ~~include~~ the annual volume of ~~water that will evaporate~~ net evaporation pursuant to ARM 36.12.116 ~~from the reservoir water surface~~.

(2) through (5) remain the same.

(6) Place of storage does not include:

(a) reservoirs, pits, pit-dams, or ponds with a capacity of less than 0.10 acre-feet; ~~or~~

(b) the use of a temporary or permanent diversion structure within a canal or ditch designed to raise water surface elevation for primary diversions or to direct flows to a secondary conveyance facility~~.~~; or

(7) remains the same but is renumbered (6)(c).

(8) remains the same but is renumbered (7).

AUTH: 85-2-113, MCA

IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, ~~85-2-350~~, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, ~~85-2-437, 85-2-439,~~ 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA

REASON: The amendment is necessary to clarify that reservoir capacity is required and that evaporation calculations should be based on net evaporation, which is a more accurate representation of conditions. The remaining amendment is necessary to improve readability and clarity.

36.12.116 EVAPORATION STANDARDS (1) ~~The following reports contain acceptable methods for estimating evaporation losses:~~ Net evaporation will be evaluated using:

~~(a) Joint Technical Working Group Report, Water Rights Compact Between the State of Montana and the Department of the Interior, Bureau of Land Management, November 1998;~~

~~(b)~~(a) Estimation of Evaporation from Shallow Ponds and Impoundments in Montana, Donald E. Potts, Miscellaneous Publication No. 48, Montana Conservation and Experiment Station School of Forestry, University of Montana, Missoula, March 1988;

~~(c)~~(b) Evaporation Pond Design for Agricultural Wastewater Disposal, USDA Soil Conservation Service, Montana Technical Note: Environment No. 7, February 1974; or

(c) other department-approved methods.

~~(d) Evaporation from Lakes and Reservoirs, a study based on 50 years of weather bureau records, Minnesota Resource Commission, June 1942; and~~

~~(e) A standard USGS evaporation pan is acceptable. The standard pan is four feet in diameter and ten inches deep and measured daily.~~

(2) ~~Deviations~~ If the applicant proposes to deviate from the acceptable standards in (1), ~~require~~ the applicant will be required to provide additional information supporting the volume requested for ~~evaporation losses~~ net evaporation.

(3) The department will determine the acceptability of other ~~evaporation loss~~ net evaporation estimates on a case-by-case basis.

AUTH: 85-2-113, MCA
IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, ~~85-2-350~~, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, ~~85-2-437, 85-2-439,~~ 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA

REASON: Net evaporation reflects the most accurate way to evaluate evaporation from a proposed project. The department does not use the Joint Technical Working Group Report, Water Rights Compact Between the State of Montana and the Department of the Interior, Bureau of Land Management, November 1998; the Evaporation from Lakes and Reservoirs, a study based on 50 years of weather bureau records, Minnesota Resource Commission, June 1942; or a standard USGS pan for determining evaporation.

As newer methods become available for calculating net evaporation, the department needs to be able to evaluate those methods. This amendment is necessary to reflect the accepted methods for calculating net evaporation and to provide the flexibility for the applicants to justify the use of new methods.

36.12.117 OBJECTION TO APPLICATION (1) through (10) remain the same.

(11) The department will mail notice to the objector of the Objection to Application of any deficiencies in the objection. The objector must address the information requested in the Objection Deficiency Notice and must have the response postmarked or hand delivered to the department within 15 ~~calendar~~ business days from the date on the Objection Deficiency Notice. ~~A fax submission of the deficiency letter response will be accepted provided the original response is postmarked timely. Electronic mail (~~E-mail~~)~~ submissions of a response will ~~not~~ be accepted.

(12) through (17) remain the same.

AUTH: 85-2-308, MCA
IMP: 85-2-308, MCA

REASON: HB 114 from the 2023 legislative session sets forth the timeline for an objector to respond to a deficiency letter. This amendment is necessary to reflect the timelines in HB 114.

36.12.121 AQUIFER TESTING REQUIREMENTS (1) Aquifer testing design and procedures must follow standard procedures that are discussed in hydrogeology textbooks and professional literature. ~~A hydrogeologist, hydrologist, or engineer familiar with aquifer testing procedures must supervise the aquifer test; however, the supervisor does not need to be on site.~~

~~(a) Applicants are encouraged to confer with department staff prior to designing an aquifer test.to ensure that the test will not have to be repeated, which may require additional expense.~~

~~(b) Department staff will provide guidance on testing procedures, monitoring, and reporting, but will not provide technical support or assistance. Requests for variance from testing requirements must be submitted to the appropriate regional office manager.~~

(2) Minimum information that must be submitted with applications:

(a) a ~~topographic~~ map with labeled location of production and observation wells ~~and water discharge point~~;

(b) ~~if available, a geologic map, stratigraphic, geomorphic, or lithologic descriptions, and drilling logs~~ well logs of production and observation wells; and

~~(c) distances between the pumping well and the observation well, and depths, dimensions, and perforated intervals of each well as specified on Form No. 633;~~

~~(d) wellhead elevation, surveyed elevations if available;~~

~~(e) a description of testing methods; and~~

~~(f)~~(c) Form No. 633, in electronic format, with all information and data provided.

(3) Minimum testing procedures are as follows~~.~~:

(a) Pumping must be maintained ~~at a constant discharge rate~~ throughout the duration of the test. The rate may not depart from the average pumping rate by more than 5%.

(b) The ~~discharge~~ average pumping rate must be equal to or greater than the proposed flow rate ~~for the entire duration of the test~~ if the application is for one well or if the total proposed rate for multiple wells can be obtained from a single well. ~~The discharge rate may be less than the proposed rate if the application is for multiple wells and the total proposed rate cannot be obtained from a single well, so long as the remainder can be demonstrated from the remaining wells under (f).~~

(c) The proposed pumping rate may be demonstrated by testing multiple wells as long as (e) is met by one well and the remaining flow rate is demonstrated by eight-hour drawdown and yield tests on additional production wells under (e)(ii) and (e)(iii).

~~(c)~~(d) ~~Discharge~~ Pumping rate must be measured with a reliable measuring device and recorded with clock time according to the schedule on Form No. 633.

~~(d)~~(e) Minimum duration of pumping during an aquifer test must be 24 hours for a proposed ~~use or discharge~~ pumping rate and volume equal to or less than ~~of~~

150 GPM ~~gpm~~ or ~~less and a proposed volume of~~ 50 acre-feet ~~or less.~~, or 72 hours for a proposed pumping rate and volume greater than 150 GPM or 50 acre-feet.

(i) At a minimum if a variance from (e) is granted, an eight-hour drawdown and yield test is required on all new production wells.

(ii) In addition to (e), if more than one new production well is proposed, at a minimum an eight-hour drawdown and yield test is required on all subsequent new production wells.

(iii) The testing procedures for a minimum eight-hour drawdown and yield test performed on any production well must follow (a), (d), and (h).

~~(e) Minimum duration of pumping during an aquifer test must be 72 hours for a proposed use or discharge of greater than 150 gpm and proposed volume greater than 50 acre-feet.~~

~~(f) Eight-hours duration drawdown and yield tests must be conducted on additional production wells.~~

~~(g) Discharged water must be conveyed a sufficient distance from the production and observation wells to prevent recharge to the aquifer during the test. Adequate water conveyance devices include pipe, large-diameter hose (e.g., fire hose), lined ditch or canal, or an existing irrigation system.~~

~~(h)~~(f) One or more observation wells must be completed in the same ~~water-bearing zone(s) or~~ source aquifer as the proposed production well and close enough to the production well so that drawdown is measurable ~~and far enough that well hydraulics do not affect the observation well. If existing wells are monitored they must not be pumped, or if pumped should be monitored at a frequency necessary to separate the effects of the pumping~~.

~~(i) Electronic pressure transducer/data logger instrumentation, electric well probes, pressure gauges on turbine pumped wells, or graduated steel tapes are acceptable methods of measuring groundwater levels.~~

~~(j)~~(g) Background ~~G~~groundwater levels in the production well and observation well(s) must be monitored at frequent intervals for at least two days prior to beginning the aquifer test according to Form No. 633. ~~to evaluate background water-level trends. An applicant must evaluate and correct for background water-level trends.~~

~~(k)~~(h) Water levels in the production well and/or observation well(s) must be ~~measured~~ reported with 0.01-foot precision according to the schedule specified on Form No. 633.

(4) An applicant may make a written request for a variance from the aquifer testing requirements in (2) and (3). The variance process is provided for in [NEW RULE I].

AUTH: 85-2-113, 85-2-370, MCA
IMP: 85-2-302, 85-2-311, 85-2-330, ~~85-2-337,~~ 85-2-341, 85-2-343, 85-2-344, 85-2-360, 85-2-361, 85-2-362, 85-2-402, 85-2-506, 85-2-508, MCA

REASON: The current rule includes requirements that are not necessary for a valid aquifer test. This amendment removes references to unnecessary information and clarifies that eight-hour drawdown and yield tests are required on additional production wells in a multi-well system.

36.12.1401 PERMIT AND CHANGE APPLICATION MODIFICATION

(1) After application acceptance, an applicant may modify any ~~Any~~ element of a permit or change application ~~may be modified~~ prior to the department's issuance of a draft preliminary determination.

(2) Modification of an element of a permit or change application requires an application amendment Form No. 656 to be submitted to the department which identifies the elements being modified;

(3) Modification of an element will reset the statutory timelines for application processing identified in 85-2-302 and 85-2-307, MCA.

(a) If the applicant completed a preapplication meeting and the modification does not require the department to update its technical analyses, the reduced preapplication timelines shall still apply.

(b) If the applicant completed a preapplication meeting and the modification requires the department to update any of its technical analyses, the reduced preapplication timelines shall no longer apply.

(2) remains the same but is renumbered (4).

~~(3)~~(5) In addition to resetting timelines identified in (1), ~~The~~ the priority date of a permit application ~~or the date received of a change application~~ will be changed to the date the last modification was made if a modification changes the nature or scope of the permit ~~or change~~ application information. A change in the nature or scope of the permit ~~or change~~ includes the following types of modifications:

(a) through (j) remain the same.

(6) If the draft preliminary determination is to deny or to grant with modifications, the applicant may modify their application, after the draft preliminary determination has been issued. The applicant may modify their application only if they have been granted an extension of time under 85-2-307(3), MCA, and may only modify it one time under this provision.

~~(4) If an applicant decides at any point in the water right application process to complete a different application for the same project, the applicant must complete a new application form. The date received will be the date the new application is submitted to the department. The department will review the application based on the requirements for that type of application.~~

AUTH: 85-2-113, MCA
IMP: 85-2-302, 85-2-307, MCA

REASON: This amendment is necessary to incorporate changes to the permitting process based on statutory changes in HB 114. The goal is to provide clear steps for when an application can be modified and what happens when the application is modified.

36.12.1501 PERMIT AND CHANGE APPLICATION DEFICIENCY LETTER AND TERMINATION (1) If the department determines the application does not contain the information requested in ARM 36.12.1601, the department will notify the applicant in one deficiency letter of any defects in a permit or change application

~~within 180 days of receipt of the application~~. The defects and the administrative rules not met will be identified in the deficiency letter.

(a) If a preapplication meeting is held, and the application is filed in compliance with [NEW RULE II], the applicant will be notified of any defects within 15 business days of receipt of the application by the appropriate regional office.

(b) If there was no preapplication meeting, the applicant will be notified of any defects within 30 business days of receipt of the application by the appropriate regional office.

(2) remains the same.

AUTH: 85-2-113, MCA
IMP: 85-2-302, 85-2-307, MCA

REASON: HB 114 from the 2023 legislative session modified the timelines and process for application review. This amendment is necessary to establish the requirements and procedures for deficiency letters consistent with the timelines set forth in HB 114.

36.12.1601 WATER RIGHT PERMIT AND CHANGE APPLICATION - CORRECT AND COMPLETE DETERMINATION (1) remains the same.

(2) A correct and complete application must conform to the standard of substantial and credible information and all applicable sections of the application form and addendums must be completed with the required information.

(2) through (4) remain the same but are renumbered (3) through (5).

~~(5) A water right permit application will be deemed correct and complete if a permit applicant's information, required to be submitted by ARM 36.12.110 through 36.12.116, 36.12.120, 36.12.121, 36.12.1301, 36.12.1401, 36.12.1701 through 36.12.1707, and 36.12.1802, conforms to the standard of substantial credible information and all the necessary parts of the application form requiring the information, including any required addendums, have been filled in with the required information.~~

~~(6) A water right change application will be deemed correct and complete if an applicant's information, required to be submitted by ARM 36.12.110 through 36.12.116, 36.12.121, 36.12.1301, 36.12.1401, 36.12.1801, 36.12.1802, 36.12.1901 through 36.12.1904, and 36.12.2001, conforms to the standard of substantial credible information and all the necessary parts of the application form requiring the information, including any required addendums, have been filled in with the required information.~~

AUTH: 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: This amendment is necessary to improve the readability of the correct and complete rules, to delete redundancies, and to reduce confusion regarding the applicability of this rule.

36.12.1702 PERMIT APPLICATION CRITERIA - PHYSICAL SURFACE WATER AVAILABILITY (1) Physical availability for perennial or intermittent streams will be determined based on monthly flow rate and volume.

~~(1)~~(a) If ~~actual~~ stream ~~gaging~~ gage records are available, or the source has been otherwise measured, or quantified ~~by a public entity~~, ~~the~~ those measurement records ~~shall~~ will be used to ~~estimate the median of the mean monthly flow rates and volumes for the stream gaging station period of record during the proposed months of diversion at the source of supply in the amount the applicant seeks to appropriate~~ quantify physical availability during the proposed months of diversion.

(b) If measurement records pursuant to (1)(a) are not available, physical availability may be estimated using a department-accepted method in conjunction with applicant collected flow measurements to validate the estimation technique. The applicant must collect a minimum of three measurements that reflect high, moderate, and low flows during the period of diversion. The applicant shall explain how the measurements are representative of high, moderate, and low flows.

(2) Physical availability for ephemeral streams will be determined based on annual runoff volume above the proposed point of diversion using climate and drainage area data.

(3) Physical availability for a lake will be determined based on stored volume.

(a) If the volume of a lake has been quantified by a qualified entity based on bathymetric data, that volume will be used to quantify physical availability.

(b) If the volume of a lake has not been quantified pursuant to (3)(a), volume may be quantified by a qualified professional based on department-approved methodology.

(4) For all other source types, physical availability of water will be determined based on monthly flow rate and volume. The applicant is required to collect measurements for these sources once monthly at department-approved intervals during the proposed period of diversion.

(5) Streamflow measurements required in (1)(b) and (4) must include a description of the methodology used to collect measurements and include all data collected.

(6) The department will determine the acceptability of measurements based on the information submitted. Measurements collected by an applicant must be measured in CFS or GPM and be collected at a department-approved location on the source of supply. The department may require from the applicant additional information and data necessary to complete its analysis.

(7) An applicant may make a written request for a variance from the measurement requirements in (1)(b) or (4) as provided for in [NEW RULE I].

~~(2) If actual stream gaging records are not available, or the source has not been otherwise measured or quantified by a public entity, an accepted method for estimating surface water flow rates and volumes shall be used in conjunction with discharge measurements to validate the estimation technique used.~~

~~(3) Except as provided in (4), stream flow measurements in cfs or gpm must be collected at least once every month during the proposed period of diversion at the most suitable location on the source of supply, which is typically at or directly upstream of the proposed point of diversion.~~

~~(4) If it is not possible to take measurements every month due to high spring flow conditions or other limiting conditions, the department may grant a variance to the measurement requirements in (3).~~

~~(a) A request for a variance from measurement requirements must be submitted in writing to the appropriate regional office.~~

~~(b) A variance may not completely relieve the applicant of the requirement of taking measurements.~~

~~(5) Measurements must be submitted on Form 649 in electronic format with all information and data provided.~~

~~(6) In addition to validating estimation techniques, measurements may, in some cases and upon approval of the department, be used as evidence of physical availability.~~

~~(7) The methods described in the following reports may be acceptable for estimating surface water flow rates and volumes:~~

~~(a) "A Method for Estimating Mean and Low Flows of Streams in National Forests of Montana," USGS Water Resources Investigation Report 85-4071;~~

~~(b) "Estimated Monthly Percentile Discharges at Ungaged Sites in the Upper Yellowstone River Basin in Montana," USGS Water Resources Investigation Report 86-4009;~~

~~(c) "A Method for Estimating Mean Annual Runoff of Ungaged Streams Based on Characteristics in Central and Eastern Montana," USGS Water Resources Investigation Report 84-4143;~~

~~(d) "Estimates of Monthly Flow Characteristics at Selected Sites in the Upper Missouri River Basin, Montana, Base Period Water Years 1937 - 86," USGS Water Resources Investigations Report 89-4082;~~

~~(e) "Mean Annual Runoff and Peak Flow Estimates Based on Channel Geometry of Streams in Southeastern MT," USGS Water Resources Investigation Report 82-4092;~~

~~(f) "Mean Annual Runoff and Peak Flow Estimates Based on Channel Geometry of Streams in Northeast and Western Montana," USGS Water Resources Investigation Report 83-4046;~~

~~(g) "Estimates of Mean Monthly Stream Flow for Selected Sites in the Musselshell River Basin, Montana," USGS Water Resources Investigation Report 89-4165;~~

~~(h) "Synthesis of Monthly and Annual Streamflow Records (Water Years 1950-2003) for Big Sandy, Clear, Peoples, and Beaver Creeks in the Milk River Basin, Montana", USGS SIR 2005-5216;~~

~~(i) "Synthesis of Monthly Natural Flows for Selected Sites in the Musselshell River Basin, Montana, Base Period 1929-89", USGS WRIR 96-4094;~~

~~(j) "Synthesis of Natural Flows at Selected Sites in and near the Milk River Basin, Montana, 1928-89", USGS WRIR 95-4022;~~

~~(k) "Estimates of Monthly Streamflow Characteristics and Dominant Discharge Hydrographs for Selected Sites in the Lower Missouri and Little Missouri Basins in Montana", USGS WRIR 94-4098;~~

~~(l) "Streamflow Characteristics of Small Tributaries of Rock Creek, Milk River Basin, Montana, Base Period Water Years 1983-87", USGS WRIR 89-4206;~~

~~(m) "Methods for Estimating Monthly Streamflow Characteristics at Ungaged Sites in Western Montana", USGS WSP 2365; and~~

~~(n) "Streamflow Characteristics of Mountain Streams in Western Montana", USGS WSP 2260.~~

~~(o) Other professionally documented hydrologic methods for estimating stream flow or annual runoff which may be applicable and acceptable to the department, including the Orsborn method, Mannings equation, U.S. Natural Resources Conservation Service-developed mean annual runoff data, and drainage area information paired to gaged streams in similar type basins may be acceptable. The department will determine the acceptability of other methods on a case-by-case basis.~~

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, 85-2-311, MCA

REASON: The type of information available and necessary to establish surface water physical availability depends on the surface water source. This amendment is necessary to clarify how physical availability will be determined for different categories of surface water sources. The list of accepted estimation techniques in the current rule are not all-inclusive, and there may be multiple estimation techniques applicable for a given source of water.

36.12.1703 PERMIT APPLICATION CRITERIA - PHYSICAL ~~GROUND WATER~~ GROUNDWATER AVAILABILITY (1) Applicants for groundwater from a developed spring must provide monthly flow measurements taken at regular intervals or at department-approved intervals during the proposed period of diversion. Measurements must be submitted with all information and data necessary for department analysis. The department will determine the acceptability of measurements based on the information submitted. Electronically formatted records may be required. An applicant cannot receive a variance from the monthly measurement requirement for developed springs.

~~(1)~~(2) Applicants for groundwater from a means of diversion other than a developed spring must follow aquifer testing requirements and provide to the department~~, at minimum,~~ information and data in conformance with ARM 36.12.121 unless a variance has been granted by the department under [NEW RULE I].

(3) Physical availability of groundwater will be determined using the measurements in (1), evaluation of the aquifer test data in (2), or using published groundwater data.

~~(2) The department will complete an evaluation of drawdown in the applicant's production well for the maximum pumping rate and total volume requested in the permit application using the information provided from the aquifer test.~~

~~(3) The department will compare the drawdown projected for the proposed period of diversion to the height of the water column above the pump in the proposed production well to determine if the requested appropriation can be sustained.~~

~~(4) The requirements of ARM 36.12.121 must be followed, unless a variance has been granted by the department.~~

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: This amendment is necessary to clarify the information necessary to determine physical availability for groundwater. Determination of physical availability for a developed spring must be based on measurements rather than modeling. This amendment is necessary to ensure the department is provided with the information necessary to determine physical availability for developed springs. Drawdown in production wells is related to adequacy of diversion rather than physical availability. This amendment is necessary to remove the drawdown requirement from physical availability. Drawdown is addressed through the amendment to ARM 36.12.1707.

36.12.1704 PERMIT APPLICATION - ~~EXISTING LEGAL DEMANDS~~ LEGAL AVAILABILITY ~~(1) Legal demands usually exist on the source of supply or its downstream tributaries and may be affected by a proposed water right application, including prior appropriations and water reservations. These existing legal demands will be senior to a new application and the senior rights must not be adversely affected:~~

~~(a) an applicant may use a plan for mitigation or aquifer recharge, as generally defined in 85-2-102, MCA, as a means of showing water is legally available.~~

~~(2)~~(1) The department will identify and quantify the existing legal demands on the source of supply and those waters to which it is tributary and which the department determines may be affected by the proposed appropriation. Legal demands will be identified based on the water right records in the Water Rights Information System.

(a) For groundwater appropriations, this shall include identification and quantification of existing legal demands for any surface water source that the department determines will ~~could~~ be depleted as a result of the groundwater appropriation.

(2) The department will compare the physical water supply at the proposed point of diversion and the legal demands within the area of potential impact to determine if water is legally available for the proposed permit. For groundwater permits, the department will compare the physical water supply and existing legal demands for impacted groundwater sources and surface water sources it determines will be depleted pursuant to (1)(a), to determine if water is legally available.

(a) The department may consider an applicant's mitigation or aquifer recharge plan as evidence that water is legally available.

(b) The department may consider additional water right information as evidence that water is legally available.

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: This amendment is necessary to clarify that the department legal availability analysis: relies on water right records contained in the WRIS to determine legal demands; evaluates legal demands on depleted surface water sources for groundwater applications; and may consider other evidence that relates to legal availability such as mitigation and aquifer recharge. The amendment removes references to adverse effect, which is a separate criterion, and consolidates ARM 36.12.1704 and 36.12.1705 to clarify how legal availability is determined and to remove redundancies.

36.12.1706 PERMIT APPLICATION CRITERIA - ADVERSE EFFECT

(1) ~~Adverse effect for permit applications is based on the applicant's plan showing the diversion and use of water and operation of the proposed project can be implemented and properly regulated during times of water shortage so that the water rights of prior appropriators will be satisfied.~~ An application must include a plan to address adverse effect. The plan must establish how the applicant will comply with a call and describe how the appropriation can be regulated during times of water shortage so the water rights of prior appropriators will not be adversely affected.

~~(2) The applicant's plan may include the use of mitigation or aquifer recharge as defined in 85-2-102, MCA, as a means of offsetting any adverse effect.~~

~~(3)~~(2) ~~A written narrative must be provided addressing the applicant's plan to prevent potential adverse effects to existing water rights, certificates, permits, and water reservations.~~ The adverse effect plan may include:

(a) and (b) remain the same.

(c) the use of a mitigation or aquifer recharge plan as a means of offsetting adverse effect; or

(d) remains the same.

(4) remains the same but is renumbered (3).

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: This amendment is necessary for readability and clarity.

36.12.1707 PERMIT APPLICATION CRITERIA - ADEQUATE DIVERSION MEANS AND OPERATION (1) through (4) remain the same.

(5) Preliminary design plans and specifications for the diversion and conveyance facilities and the equipment used to put the water to beneficial use must be submitted including the following:

(a) and (b) remain the same.

~~(c) the proposed diversion schedule, such as number and timing of irrigation sets;~~

(d) remains the same but is renumbered (c).

~~(e)~~(d) the flow rate and operation of diversions must be described, including the proposed diversion schedule.

(6) remains the same.

(7) For groundwater wells, the department will compare the drawdown projected for the proposed period of diversion to the height of the water column above the bottom of the proposed production well to determine if the well design is adequate for the proposed appropriation.

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: This amendment is necessary to include drawdown as a consideration for adequacy of diversion rather than physical availability consistent with the amendment to ARM 36.12.1703.

36.12.1801 PERMIT AND CHANGE APPLICATIONS - BENEFICIAL USE

~~(1) Water may be appropriated for beneficial use:~~

~~(a) by a governmental entity for the public;~~

~~(b) by a person for the sale, rent, or distribution to others; or~~

~~(c) by a person for the person's own use, unless provided otherwise by statute.~~

~~(d) or for other person's use, according to law.~~

~~(2)~~(1) The applicant must explain the following:

(a) how the purpose for the water benefits the applicant or other persons as authorized by law; and

(b) remains the same.

~~(3)~~(2) The applicant does not need to explain that the flow rate or volume for each purpose is reasonable if:

(a) the requested volume of water for each purpose conforms to standards set out in ARM 36.12.115 for a permit application or ARM 36.12.1902 for a change application; and

(b) there are no other associated or overlapping water rights appurtenant to the proposed place of use~~.~~; or

(c) the purpose of use, place of use, and operation of the proposed project is not changing from that found by the department's historical use analysis.

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: The deletion of (1) is necessary because statute defines who can appropriate water for beneficial use. Amended (2)(c) clarifies that certain beneficial use information is not required if certain elements of historic use are not being changed.

36.12.1903 CHANGE APPLICATION - ADVERSE EFFECT (1) Lack of adverse effect for change applications is generally based on the applicant's plan showing the diversion and use of water and operation of the proposed project will not exceed historical use, and can be implemented and properly regulated. A written narrative must be provided addressing the applicant's plan to prevent

potential adverse effects to existing water rights, certificates, permits, and water reservations.

(2) The applicant's plan must document the effects to the other water rights including, but not limited to, the following:

(a) through (d) remain the same.

(e) the effects of changing the historical diversion pattern including rate and timing of depletions;

(f) for groundwater applications, the applicant shall explain how the changed water right will affect water levels in wells of junior and senior water rights and the rate and timing of net depletions from hydraulically connected surface waters, and what effect those changes will have on those water rights within the notice area.

(3) The department must consider historical use in determining whether changing the water right would constitute an enlargement of the original water right.

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: This amendment is necessary to clarify that the department evaluates net depletion as defined by rule when evaluating a change application.

36.12.1904 CHANGE APPLICATION CRITERIA - ADEQUATE DIVERSION MEANS AND OPERATION (1) remains the same.

(2) Preliminary design plans and specifications for the current and/or proposed diversion and conveyance facilities and the equipment used to put the water to beneficial use must be submitted with the application including the following:

(a) and (b) remain the same.

(c) the historical and proposed flow rate and volume design capacity.

(3) remains the same.

(4) Wells must be constructed according to provisions in ARM Title 36, chapter 21, subchapter 6.

(5) For developed springs an explanation of how the spring will be developed must be included in the application.

(6) For groundwater wells, the department will compare the drawdown projected for the proposed period of diversion to the height of the water column above the bottom of the proposed production well to determine if the well design is adequate for the proposed appropriation.

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: This amendment is necessary to include drawdown as a consideration for adequacy of diversion and to make the adequacy of diversion rule for change applications similar to the rule for permit applications.

5. The department proposes to repeal the following rules:

36.12.1301 PERMIT AND CHANGE APPLICATION ACCEPTANCE

AUTH: 85-2-113, MCA
IMP: 85-2-302, 85-2-310, MCA

REASON: The repeal of this rule is necessary because the requisite information from ARM 36.12.1301 is incorporated into New RULES IV and V.

36.12.1701 FILING A PERMIT APPLICATION

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, 85-2-311, MCA

REASON: The repeal of this rule is necessary because the requisite information from ARM 36.12.1701 is incorporated into NEW RULE IV.

36.12.1705 PERMIT APPLICATION CRITERIA - COMPARISON OF PHYSICAL WATER AVAILABILITY AND EXISTING LEGAL DEMANDS

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: The repeal of this rule is necessary because the requisite information from ARM 36.12.1705 is incorporated into the amendment to ARM 36.12.1704.

36.12.1901 FILING A CHANGE APPLICATION

AUTH: 85-2-112, 85-2-113, 85-2-302, MCA
IMP: 85-2-302, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-436, MCA

REASON: The repeal of this rule is necessary because requisite information from ARM 36.12.1901 is incorporated into NEW RULE IV.

6. Pursuant to 2-4-302(1)(c), MCA, based on 2022 application statistics, the department estimates the monetary impact from the increase in fees set forth in the proposed amendments to ARM 36.12.103 as follows:

Subsection	Cumulative annual amount	Persons affected annually
36.12.103(2)(a)	$7,500.00	7
36.12.103(2)(b)	$2,000.00	10
36.12.103(2)(c)	$23,800.00 (8 x $1700.00) + (17 x $600.00)	25
36.12.103(2)(d)	$334,375.00	2,675
36.12.103(2)(e)	$5,250.00	42
36.12.103(2)(f)	$33,600 (8 x $1600.00) + (26 x $800.00)	34
36.12.103(2)(g)	$3,200.00	16

36.12.103(2)(h)	$1,600.00	8
36.12.103(2)(i)	$627,900.00	12,558
36.12.103(2)(j)	$225.00	9
36.12.103(2)(k)	$800.00	4
36.12.103(2)(l)	$1,500.00	1
36.12.103(2)(m)	$1,500.00	1
36.12.103(2)(n)	$1,400.00	28
36.12.103(2)(o)	$50.00	1
36.12.103(2)(p)	$800.00	1
36.12.103(2)(q)	$18,400.00	1
36.12.103(2)(r)	$1,300.00	13
36.12.103(2)(s)	$900.00	9
36.12.103(2)(v)	$450.00	9
36.12.103(2)(w)	$600.00	3
36.12.103(2)(y)	$1,600	4
36.12.103(2)(z)	$750.00	1

The monetary impact of the new fees set forth in the proposed amendment to ARM 36.12.103(2)(aa) and (ab) is accounted for in ARM 36.12.103(2)(a), (c), and (f).

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted in writing to: Martin Balukas, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, or e-mail at DNRCOAH@mt.gov, and must be received no later than 5:00 p.m. on November 3, 2023.

8. Martin Balukas, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on August 1, 2023.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Brian Bramblett
Brian Bramblett
Rule Reviewer

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

Certified to the Secretary of State September 26, 2023.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 38.5.601, 38.5.602, 38.5.603, 38.5.604, 38.5.605, 38.5.606, 38.5.607, 38.5.608, 38.5.609, 38.5.610, and 38.5.611 pertaining to optional filing standards for electric, gas, water, and sewer utilities	)))))))))	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Service Regulation proposes to repeal the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on October 24, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Public Service Regulation in person or by mail at 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; by telephone at (800) 646-6150; by fax at (406) 444-7618; or by e-mail at pschelp@mt.gov.

3. The department proposes to repeal the following rules:

38.5.601 PURPOSE

AUTH: 69-3-103, MCA
IMP: 69-2-101, MCA

38.5.602 SCOPE

AUTH: 69-3-103, MCA
IMP: 69-2-101, MCA

38.5.603 EFFECTIVENESS MEASUREMENTS

AUTH: 69-3-103, MCA
IMP: 69-2-101, MCA

38.5.604 ELECTION

AUTH: 69-3-103, MCA
IMP: 69-2-101, MCA

38.5.605 FINAL ORDERS – APPEALS

AUTH: 69-3-103, MCA
IMP: 69-2-101, MCA

38.5.606 RATEMAKING PROCEDURE – GENERAL RATE CASES

AUTH: 69-3-103, MCA
IMP: 69-2-101, MCA

38.5.607 RATEMAKING PROCEDURES – LIMITED ISSUE FILINGS

AUTH: 69-3-103, MCA
IMP: 69-2-101, MCA

38.5.608 COST OF EQUITY

AUTH: 69-3-103, MCA
IMP: 69-2-101, MCA

38.5.609 COST OF SERVICE FILING

AUTH: 69-3-103, MCA
IMP: 69-2-101, MCA

38.5.610 APPLICATION FOR SUMMARY CLOSURE

AUTH: 69-3-103, MCA
IMP: 69-2-101, MCA

38.5.611 SUNSET/REPEALER

AUTH: 69-3-103, MCA
IMP: 69-2-101, MCA

REASON: The department proposes to repeal the above-listed rules, comprising ARM Title 38, chapter 5, subchapter 6, because these rules were designed to be temporary in nature. ARM 38.5.611(1) reads, "The rules in this sub-chapter are repealed 96 months after publication of their notice of adoption." 96 months after publication of the rules' notice of adoption was February 27, 2000. The proposed action will effectuate the language in ARM 38.5.611(1).

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Public Service Regulation in person or by mail at 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; by telephone at (800) 646-6150; by fax at (406) 444-7618; or by e-mail at pschelp@mt.gov. Comments must be received no later than 5:00 p.m. on

November 3, 2023. Please reference Docket No. 2023.09.085 when submitting a comment.

5. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 0 persons based on the fact the rules proposed to be repealed became ineffectual as of February 27, 2000.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name and email address added to the list shall contact the Department of Public Service Regulation in person or by mail at 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; by phone at (800) 646-6150; by fax to: (406) 444-7618; by email at pschelp@mt.gov; or by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Laura D. Vachowski
Laura D. Vachowski
Rule Reviewer

/s/ James Brown
James Brown
President
Public Service Commission

Certified to the Secretary of State September 26, 2023.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I, II, III, and IV pertaining to Tax on Electric Vehicle Charging Stations	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On August 25, 2023, the Department of Transportation (department) published MAR Notice No. 18-195 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 809 of the 2023 Montana Administrative Register, Issue Number 16.

2. The department has adopted the above-stated rules as proposed: NEW RULES I (18.15.901), II (18.15.902), III (18.15.903), and IV (18.15.904).

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses, are as follows:

COMMENT #1: Several commenters thanked the department for the collaboration with stakeholders throughout the rulemaking process.

RESPONSE #1: The department thanks the commenters for their recognition and participation.

/s/ Valerie A. Balukas
Valerie A. Balukas
Rule Reviewer

/s/ Larry Flynn
Lawrence Flynn
Acting Deputy Director
Department of Transportation

Certified to the Secretary of State September 26, 2023.

BEFORE THE ALTERNATIVE HEALTH CARE BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.111.2301 pertaining to unprofessional conduct	)))	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 4, 2023, the Alternative Health Care Board (board) published MAR Notice No. 24-111-29, which included the proposed amendment of the above-stated rule, at page 738 of the 2023 Montana Administrative Register, Issue Number 15. On September 22, 2023, the board published the notice of amendment, amendment and transfer, transfer, adoption, and repeal at page 1093 of the 2023 Montana Administrative Register, Issue Number 18.

2. On June 23, 2023, the board published MAR Notice No. 24-111-28, which also included a proposed amendment of the above-stated rule, at page 542 of the 2023 Montana Administrative Register, Issue Number 12. On August 25, 2023, the board published the notice of amendment at page 886 of the 2023 Montana Administrative Register, Issue Number 16.

3. A rule number was incorrectly referenced in ARM 24.111.2301(1) as the result of the adoption of the proposed amendments in MAR Notice No. 24-111-28. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

24.111.2301 UNPROFESSIONAL CONDUCT (1) It is unprofessional conduct for a licensee or applicant to violate any statute, rule, or standard of care governing their scope of practice. In addition, the following is unprofessional conduct:

(a) through (g) remain as adopted.

(h) failure by a midwife to maintain current and valid certifications in adult and infant cardiopulmonary resuscitation and neonatal resuscitation as provided by 37-27-201, MCA ~~.~~ ;

~~(n)~~(i) prescribing a scheduled drug without a current DEA registration.

AUTH: 37-1-131, 37-1-319, 37-13-201, 37-26-201, 37-27-105, MCA
IMP: 37-1-141, 37-1-316, 37-1-319, 37-13-201, 37-26-201, 37-27-105, MCA

4. The corrected version of this rule will be available on the Secretary of State's web site upon publication of this notice, and in print with the September 30, 2023 replacement pages.

ALTERNATIVE HEALTH CARE BOARD
ALISUN BONVILLE, ND
PRESIDING OFFICER

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 26, 2023.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.22.102 pertaining to Issuance of Permits	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 21, 2023, the Department of Livestock published MAR Notice No. 32-23-338 pertaining to the proposed amendment of the above-stated rule at page 688 of the 2023 Montana Administrative Register, Issue Number 14.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Office
Department of Livestock

Certified to the Secretary of State September 26, 2023.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.2.403 pertaining to diagnostic laboratory fees	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 21, 2023, the Department of Livestock published MAR Notice No. 32-23-339 pertaining to the proposed amendment of the above-stated rule at page 690 of the 2023 Montana Administrative Register, Issue Number 14.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Department of Livestock

Certified to the Secretary of State September 26, 2023.

BEFORE THE DEPARTMENT OF MILITARY AFFAIRS
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 34.7.201 through 34.7.205 pertaining to the application of reimbursement for service members' group life insurance premiums	)))))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On August 25, 2023, the Department of Military Affairs published MAR Notice No. 34-11 pertaining to the public hearing on the proposed repeal of the above-stated rules at page 863 of the 2023 Montana Administrative Register, Issue Number 16.

2. The department has repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Sundi West
Sundi West
Rule Reviewer

/s/ J. Peter Hronek
J. PETER HRONEK
Director
Military Affairs

Certified to the Secretary of State September 26, 2023.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2023. This table includes notices in which those rules adopted during the period April 14, 2023, through September 22, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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CHRISTI JACOBSEN
SECRETARY OF STATE

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